



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 22 मार्च, 2019 / 1 चैत्र, 1941

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, the 20th March, 2019

No. HHC/Admn.6 (20)/77-XX.—In partial modification of Notification No.HHC/Admn.6(20)/77-XX-6853-79 dated 15-3-2019, Hon'ble High Court of Himachal Pradesh has been pleased to declare 22nd March, 2019 (Friday) as a non-Court working day for the High Court

instead of public holiday on account of Holi festival and the Registry shall remain open on that day.

By order,
Sd/-
Registrar General.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated the 29th October, 2018

No. Shram (A) 6-2/2014 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment, Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	92/16	Sakina Devi	E.E.HPPWD, Jogindernagar	02-05-2018
2.	739/16	Amar Singh	Er.-in-Chief, HPPWD, Shimla	02-05-2018
3.	607/16	Biri Singh	Er.-in-Chief, HPPWD, Shimla	02-05-2018
4.	666/16	Baner Singh	Er.-in-Chief, HPPWD, Shimla	02-05-2018
5.	665/16	Gurdei	Er.-in-Chief, HPPWD, Shimla	02-05-2018
6.	758/16	Gurbax	Principal Chief Conservator of Forest	03-05-2018
7.	579/16	Vijay Kumar	D.F.O. Palampur	03-05-2018
8.	756/16	Jagtamba	D.F.O. Palampur	03-05-2018
9.	89/15	Suresh Kumar	E.E. HPPWD, Dharampur	04-05-2018
10.	360/16	Ashok Kumar	E.E.HPPWD, Jawali	04-05-2018
11.	181/16	Uttam Chand	- do -	04-05-2018
12.	312/16	Sher Singh	- do -	04-05-2018
13.	132/16	Nathu Ram	- do -	04-05-2018
14.	271/16	Shamsher Singh	- do -	04-05-2018
15.	259/16	Surjit Kumar	- do -	04-05-2018
16.	262/16	Ramesh Chand	- do -	04-05-2018
17.	263/16	Vijay Kumar	- do -	04-05-2018
18.	265/16	Rajinder Kumar	- do -	04-05-2018
19.	264/16	Roop Lal	- do -	04-05-2018
20.	311/16	Som Raj	- do -	04-05-2018
21.	180/16	Babu Ram	- do -	04-05-2018
22.	324/16	Karnail Singh	- do -	04-05-2018
23.	378/16	Chamaru Ram	- do -	04-05-2018
24.	359/16	Krishan Kumar	- do -	04-05-2018
25.	361/16	Rumal Singh	- do -	04-05-2018
26.	653/16	Lekh Raj	E.E. I&PH, Gagret	16-05-2018
27.	280/15	Hem Raj	E.E. HPPWD, Killar	19-05-2018
28.	218/16	Prem Raj	E.E. HPPWD, Killar	19-05-2018
29.	154/17	Tilak Raj	D.F.O. Chamba	22-05-2018
30.	571/16	Chaman Singh	E.E. HPPWD, Killar	22-05-2018
31.	157/15	Roop Singh	E.E. HPPWD, Killar	22-05-2018
32.	129/15	Dogi Devi	E.E. HPPWD, Killar	22-05-2018

33.	203/15	Butti	E.E. HPPWD, Killar	22-05-2018
34.	174/16	Amar Chand	E.E. HPPWD, Killar	23-05-2018
35.	240/16	Surinder Kumar	E.E. I&PH Pangri	23-05-2018
36.	601/16	Ashok Kumar	Dy. Dir. Animal Husbandry	23-05-2018
37.	35/17	Sanjay Kumar	Registrar CSK, HPKV Palampur	25-05-2018
38.	24/17	Champa Devi	Registrar CSK, HPKV Palampur	25-05-2018
39.	07/16	Bhim Dei	E.E. I&PH/HPPWD, Killar	25-05-2018
40.	857/16	Vandna Kumari	Pr.Chief Conservator of Forest	25-05-2018
41.	797/16	Ravi Kumar	Pr.Chief Conservator of Forest	25-05-2018
42.	478/15	Suresh Kumar	D.F.O. Palampur	25-05-2018
43.	762/16	Chain Singh	E.E./ASE HPSEBL, Dalhousie	26-05-2018
44.	839/16	Paras Ram	E.E./ASE HPSEBL, Dalhousie	26-05-2018
45.	290/15	Mahesh Kumar	D.F.O. Mandi	29-05-2018
46.	393/14	Dhani Ram	D.F.O. Mandi	29-05-2018
47.	372/15	Nirmla Devi	D.F.O. Suket	29-05-2018
48.	328/16	Prakash Chand	E.E. HPPWD, Dharampur & others	30-05-2018
49.	151/13	Gopal Singh & other	Factory Manager D& S Ltd.	30-05-2018
50.	152/13	Sohan Lal	Factory Manager D&S Ltd.	30-05-2018
51.	193/15	Sandeep Kumar	E.E. I&PH, Padhar	30-05-2018

By order,

NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 92/2016
Date of Institution : 04-3-2016
Date of Decision : 02-05-2018

Smt. Sakina Devi w/o late Shri Balam Ram, r/o Village Matha Thana, P.O. Panjalag, Tehsil Lad Bharol, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, HPPWD, (B&R) Division, Jogindernagar, District Mandi, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Sakina Devi w/o late Sh. Balam Ram, Village Matha Thana, P.O. Panjalag, Tehsil Lad Bharol, Distt. Mandi, H.P. by the Executive Engineer, HPPWD (B&R) Division Jogindernagar, District Mandi, H.P. from 12/2003, who has worked as beldar on daily wages basis during the year 6/2002 to 12/2003, and has raised her industrial dispute *vide* demand notice dated 27-3-2014 after delay of more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period during the year 6/2002 to 12/2003 and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of April, 2002 where she continued to work upto December, 2003 and thus had completed 240 days in preceding 12 calendar months prior her illegal termination from service. Averments made in the claim petition further revealed that service of the petitioner had been unlawfully terminated by the respondent *vide* verbal order in the year 2003 without complying the mandatory provision of the Act. It is alleged that prior to termination of the service of petitioner, no notice as necessarily required under Section 25-F of the Act was served upon her. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 27-3-2014 copy of the same was forwarded to Labour Inspector, Joginder Nagar, Distt. Mandi for further necessary action. It is alleged that Labour Inspector-*cum*-Conciliation Officer, Joginder Nagar could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was consequently referred to appropriate government *i.e.* Labour Commissioner, Shimla. Not only this, the principle of "Last come First go" is alleged to have not been followed by the respondent as some juniors namely Gautam Ram, Nihal Chand, Ram Dhan, and Anil Kumar, Pardeep Kumar and Kishori Lal were retained in service without any breaks whereas the service of petitioner had been terminated. The dispute is stated to have not been filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2003 was without compliance of mandatory provision of Industrial Disputes Act which was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition is being bad for non-joinder of necessary parties, delay and laches. On merits admitted that petitioner was engaged as daily wager on June/2002 by the Executive Engineer National Highway Division HPPWD Joginder Nagar on muster roll basis where she worked upto December, 2003 intermittently and left the work at her own sweet will. It is denied that respondent had verbally terminated the service of petitioner in the year 2003 however stated that respondent/department had not at all terminated the services of petitioner. It is maintained that petitioner had left the job of her own sweet will and therefore the question of any illegal termination of petitioner did not arise. It is also contended by the respondent that department never been terminated the services of any workmen and therefore the question of termination of the

services of petitioner by the respondent in such like situation did not arise. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Rajeev Sharma, the then Executive Engineer, HPPWD (B&R) Division Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays EX. RW1/B, copy of notification dated 9-12-2003 Ex. RW1/C, copy of office order Ex. RW1/D, Mandays chart of Nihal Chand, Ram Chand, Pradeep Kumar, Kishori Lal and Gautam Ram Ex. RW1/E to Ex. RW1/I and closed evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 22-9-2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* December, 2003 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to?
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad for non-joinder of the necessary parties as alleged?
- (5) Whether the claim petition is bad on account of delay and laches as alleged?

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Relief.	:	Petition is partly allowed awarding lump sum compensation of Rs. 35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the month of December, 2003 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed on daily wage basis with the respondent in the month of April, 2002 on muster roll basis as beldar who continued to work till December, 2003 when her services were allegedly terminated without issuing any notice by respondent or paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Gautam Ram, Nihal Chand, Ram Dhan, and Anil Kumar, Pardeep Kumar and Kishori Lal were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record clearly reveals that petitioner had worked for 92 days in the year 2002 and 144 days in 2003. Even if we look at the mandays chart, this would show that immediately preceding her termination in 2003, petitioner has factually worked for 92 days in 2002 and 144 days in 2003 aggregating to 236 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since 2002 till December, 2003 immediately prior to her retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would establish that petitioner had not worked for more than 240 days immediately prior to her retrenchment as stated above.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had not issued any notice or letter calling upon her to join. Even there is no evidence on record showing that when service of petitioner had been finally terminated in year 2003 no notice was given calling upon her to join duty. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued by respondent. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after December, 2003. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent stand *qua* abandonment of service by petitioner which has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Be it noticed that Gautam Ram, Nihal Chand, Ram Dhan, and Anil Kumar, Pardeep Kumar and Kishori Lal who had been engaged in the years 2003 and 2004 Ex. RW1/E to Ex. RW1/I respectively. It is pertinent to mention to state here that when persons mentioned in para no. 4 of the affidavit Ex. PW1/A were engaged whereas the service of petitioner had been terminated absolutely in violation of the provisions of Section 25-G of the Act besides that petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evident that after termination of petitioner, she was available for job who was not appointed by respondent however some persons fresh were engaged & allowed to join in service was in violation of principle of 'Last come First go' envisaged under Section 25-H of Industrial Disputes Act.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Gautam Ram, Nihal Chand, Ram Dhan, and Anil Kumar, Pardeep

Kumar and Kishori Lal were engaged between 2003 to 2004. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 2003 to 2004 whereas petitioner had been retrenched in 2003. It is pertinent to mention to state here that when persons mentioned in para No. 3 of the claim petition as well as affidavit Ex. PW1/A were retained in service whereas the service of petitioner was retrenched by the respondent.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after December, 2003 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice *i.e.* 20-8-2013 after about 09 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of December, 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been

made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer for manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 42 years when her services were illegally terminated and not likely to get government job at this age and had factually worked for 236 days from the year 2002 to 2003 irrespective of fact that demand notice was issued after a period of 11 years by the petitioner, she is entitled for lump sum compensation of Rs. 35,000/- (Rupees thirty five thousand only) keeping in view peculiar facts and circumstances, it would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 5 are answered accordingly.

Issue No. 3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 4

22. In the light of my findings on the issues No.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division *vide* office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

Relief

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of May, 2018.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 739/2016
Date of Institution : 18-11-2016
Date of Decision : 02-05-2018

Shri Amar Singh s/o Shri Loharu Ram, r/o Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan Shimla- 2
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Amar Singh s/o Sh. Loharu Ram, Vill. Banehardi, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. 3/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, and (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 2/1999 to 3/1999, only for 40 days, and has raised his industrial dispute *vide* demand notice dated 15-3-2015 after more than 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of February, 1999 where he continued to work upto March, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in March, 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 15-3-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no. 8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 2/1999 who intermittently worked upto 3/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged

that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17-10-2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondents during March, 1999 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition suffers from vice of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief.	:	Petition is partly allowed awarding lumpsum compensation of Rs.10,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 1999 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of February, 1999 on muster roll basis as beldar who continued to work till March, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked only for two months *i.e.* February & March, 1999. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of February, 1999 till March, 1999. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 40 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 40 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since in the year 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh

Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, respondent is held to have violated Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after March, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, irrespective of fact that petitioner had issued demand notice *i.e.* 15-3-2015 after about 16 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan**

Development Corporation and another vs. Geetam Singh reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of March, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making

reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **two months** who was non-skilled worker ageing 39 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 40 days in the year 1999 irrespective of fact that demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.10,000/- (Rupees ten thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.10,000/- (Rupees ten thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 607/2016
Date of Institution : 26-8-2016
Date of Decision : 02-05-2018

Shri Biri Singh s/o Shri Dumnu Ram, r/o Village Riyur, P.O. Dharampur, Tehsil Sarkaghat,
District Mandi, H.P.*Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan Shimla.
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.
....*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Biri Singh s/o Sh. Dumnu Ram, Vill. Riyur, P.O. Dharampur, Tehsil, Sarkaghat, Distt. Mandi, H.P. during 9/2001 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 10/1999 to 6/2001 & 8/2001 to 9/2001 only for 481.5 days, and has raised his industrial dispute *vide* demand notice dated 4-3-2015 after 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of October, 1999 where he continued to work upto September, 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in September, 2001 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely s/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 4-3-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no. 8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2001 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 10/1999 who intermittently worked upto 9/2001. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged

that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-01-2017 for determination:—

- (1) Whether termination of the services of the claimant/petitioner by the respondents during 09/2001 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR*.
- (4) Whether the claim petition suffers from vice of delay and laches as alleged. If so, its effect? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

- | | |
|-------------|--|
| Issue No. 1 | : Yes |
| Issue No. 2 | : Discussed |
| Issue No. 3 | : No |
| Issue No. 4 | : Discussed |
| Relief | : Petition is partly allowed awarding lumpsum compensation of Rs.45,000/- per operative part of award. |

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2001 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of October, 1999 on muster roll basis as beldar who continued to work till September, 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked for three years *i.e.* 1999 to 2001. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of October, 1999 till September, 2001. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Shashi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 78½ days in the year 1999, 259 days in 2000 and 144 days in 2001. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2001, petitioner has factually worked for 144 days in 2001 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since in the year 2001 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any

other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2001 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 2001 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 4-3-2015 after about 16 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in

2014 LLR 967 titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of September, 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the

correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **three years** who was non-skilled worker ageing 35 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 481½ days in the years 1999 to 2001 irrespective of fact that demand notice was issued after a period of 15 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lumpsum compensation of Rs.45,000/- (Rupees forty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.45,000/- (Rupees forty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	666/2016
Date of Institution	:	12-9-2016
Date of Decision	:	02-05-2018

Shri Baner Singh s/o Shri Hari Singh, r/o Village Khailag, P.O. Longani, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan Shimla
 2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.
-Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner	:	Sh. N.L. Kaundal, AR
	:	Sh. Vijay Kaundal, Adv.

For the Respondent(s)	:	Sh. Sanjeev Singh Rana, Dy. D.A.
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AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Baner Singh s/o Sh. Hari Singh Village, Khailag, PO Longni, Tehsil, Sarkaghat, Distt. Mandi, H.P. during 6/2001 by the Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 9/1998 to 6/2001 only for 832.5 days, and has raised his industrial dispute *vide* demand notice dated 28-1-2015 after 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of September, 1998 where he continued to work upto June, 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in June, 2001 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 28-1-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2001 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as

daily wage on 9/1998 who intermittently worked upto 6/2001. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 18-10-2017 for determination:—

- (1) Whether termination of the services of the petitioner by the respondents during June, 2001 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition suffers from *vice* of delay and laches as alleged ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lumpsum compensation of Rs. 50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2001 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of September, 1998 on muster roll basis as beldar who continued to work till June, 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked for three years *i.e.* 1998 to 2001. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of September, 1998 till June, 2001. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 60 days in the year 1998, 304½ days in 1999, 335 days in 2000 and 133 days in 2001. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2001, petitioner has factually worked for 133 days in 2001 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since in the year 2001 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

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other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2001 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, respondent is held to have violated Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after June, 2001 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, irrespective of fact that petitioner had issued demand notice *i.e.* 28-1-2015 after about 16 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and crossexamination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/Counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in

2014 LLR 967 titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of June, 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged

the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 sub-para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **four years** who was non-skilled worker ageing 32 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 832 ½ days in the years 1998 to 2001 irrespective of fact that demand notice was issued after a period of 15 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lumpsum compensation of Rs. 50,000/- (Rupees fifty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 665/2016
Date of Institution : 12-9-2016
Date of Decision : 02-05-2018

Smt. Gurdei w/o Shri Roop Lal, r/o Village & Post Office Bradta, Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Gurdei w/o Sh. Roop Lal, Vill. & PO Bradta, Tehsil Sarkaghat, Distt. Mandi, H.P. on 1/1/2011 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engineer, HPPWD, Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 11/1998 to 2/1999, & 4/1999 to 2/2004 & 4/2004 to 8/2004 & 11/2004 to 7/2005 & 1/1/2010 to 12/2010 only for 2385.5 days, and has raised her industrial dispute *vide* demand notice dated 28-1-2015 after 4 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 4 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity) filed by the claimant/petitioner revealed that petitioner had been engaged by respondent as beldar in November, 1998 and that claimant/petitioner continuously worked upto 7-7-2005 and thereafter petitioner had been again engaged in January, 2010 where petitioner worked upto December, 2010 and finally terminated on 1-1-2011. It is contended that petitioner had completed more than 240 days in each calendar year and thus petitioner covered under the definition of "continuous service" envisaged under Section 25-B of the Act. The averments made in the claim petition further revealed that the services of the claimant/petitioner had been unlawfully terminated by the respondent *i.e. vide* verbal order in December, 2010 without prior intimation besides requirement of Section 25-F of the Act was not complied neither one month's notice nor retrenchment compensation was paid to him. It further transpires from claim petition that at the respondent/department at the time had terminated the services of more than 1000 daily wagers who were engaged by respondent in HPPWD Dharampur Division from time to time without following procedure. It has been specifically alleged that at the time of termination of the services of petitioner, department/respondent had even not followed the principle of "Last come First go" envisaged under Section 25-G of the Act as some junior workmen namely Shashi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000) and Inder Singh (01-01-2000) were retained by the respondent/department. It further transpires from the claim petition that after termination of the services of petitioner fresh hands had also been appointed by the respondent/department Pardeep Kumar, Vipin Kumar, Lekh Raj, Subhash Chand Sunita Devi, Kirna Devi, Ritesh Kumar, Chanchla Devi, Ramesh Kumar, Ruma Devi etc. who had been appointed in the years 2008 to 2012 but respondent had not been given any opportunity of re-employment to petitioner thereby respondent had also violated the provisions of Section 25-H of the Act. It is alleged that aggrieved with the action of the respondent violating Sections 25-F, 25-G and 25-H, petitioner had raised industrial dispute and copy of the same was forwarded to Labour Officer, Mandi who had tried to settle the dispute amicably but Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act to appropriate government *i.e.* Labour Commissioner, Shimla who turned down prayer of petitioner to refer the case of petitioner for adjudication to this Court on the ground that dispute *inter se* parties did not exist. Again aggrieved with the order passed by the Labour Commissioner, Shimla, the petitioner had also highlighted the case of one Sanjay Kumar s/o Shri Purbia Ram who had filed CWP No. 8315/2012 which was allowed and said Sanjay Kumar along-with other co-workers had

been awarded back wages, continuity in service as well as past service benefits who was entitled to all benefits except actual back wages. Accordingly, alleging the act of respondent in terminating service of petitioner *w.e.f.* January, 2011 without complying necessary provisions of the Act, the same was illegal in violation of provisions of Industrial Disputes Act. Moreover, the petitioner did not remain gainfully employed either government department or private organization from the date of her illegal termination who is entitled for back wages. Accordingly, illegal termination order has been prayed to be set aside with direction to respondent to reinstate petitioner in service with full back wages, seniority, continuity in service and with all consequential service benefits. It has also been prayed that respondent be directed to regularize the services of petitioner on basis of policy framed by the government besides on the basis of seniority.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits, admitted to the extent that petitioner was engaged as daily waged beldar in November, 1998 who had worked intermittently upto 7-7-2010 and thereafter petitioner had filed reference before this court however respondent had complied order of this Tribunal and the service of petitioner had been again engaged by the respondent as daily wage beldar who worked upto December, 2010 and thereafter she had left the job at her own sweet will who had not completed 240 days as was required under Section 25-F of the Act so as seek benefits of continuous service as envisaged under Section 25-B of the Act and since the petitioner had failed to prove to establish continuous service as envisaged under Section 25-B of the Act no notice was required to be served upon him. It also remains plea of the respondent that petitioner had abandoned job at her own sweet will. However, denied that service of petitioner was terminated by respondent in January, 2011. It is alleged that since petitioner had left the job at her own will and worker Shashi Pal and Roshani Devi attended work with the department continuously however, Mamta and Inder Singh had been engaged on compassionate ground. As such, there was no violation of the Section 25-G of the Act. Allegation of retrenching the petitioner in January, 2011 was emphatically denied although admitted that petitioner had filed demand notice in 2015 after about 4 years but never approached the respondent and the delay was not satisfactorily explained who was not entitled for any relief from the Court. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 18-10-2017 for determination:—

- (1) Whether termination of services of the claimant/petitioner by the respondents during 01-01-2011 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

(4) Whether the claim petition suffers from the vice of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	No
Relief.	:	Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner being daily waged beldar appointed in November, 1998 by the respondents and respondent being petitioner's employer is not in dispute. It remains the case of the petitioner that she had continuously worked till December, 2010 reiterating contents of affidavit Ex. PW1/A and other documentary evidence and thus had completed 240 days in each calendar year. Be it stated that the claim of the respondent remain inconsistent with that of petitioner as respondent had alleged that petitioner had been engaged as daily waged beldar in November, 1998 who worked till December, 2010 intermittently. Similarly, the mandays chart Ex. RW1/B relied by the respondent shows petitioner to have worked till December, 2010 from November, 1998. In the year 2010, petitioner has worked for whole of the year and was retrenched on 31-12-2010 and worked for 352 days prior to her termination on 01-01-2011. It is also evident from record that petitioner had raised demand notice on 28-1-2015 after about 4 years as her service had been terminated in December, 2010.

12. Now referring to mandays chart Ex. RW1/B, it can be safely inferred from the records that in the year 1998, petitioner had merely worked for 37 days whereas in 1999 she had worked for 306 days, 362 ½ days in 2000, 324 days in 2001, 303 days in 2002, 329 days in 2003, 207 days in 2004, 165 days in 2005 and in 2010 had worked for 352 days. The plea of respondent remains that petitioner had abandoned the job who was earlier attending the work assigned to her intermittently but there exist nothing on record establishing that when petitioner did not attend the work particularly after 2010, no notice was issued by respondent calling upon her to join duties and mere allegation that petitioner had abandoned the job could not be accepted *moreso* when no notice was issued and no enquiry was conducted *qua* unauthorized absence of petitioner from duty. No reason whatsoever has been assigned by respondent for such inaction or omission for not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent *qua* plea of abandonment which has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment which instead merits rejection for want of any reliable evidence to this effect.

13. Stepping into witness box as PW1, petitioner has sworn her affidavit Ex. PW1/A wherein she has reiterated her stand as maintained in the claim petition. It has come in findings in

para No.11 of this award that petitioner had worked for 31 days in December, 2010, the respondent had terminated service of petitioner illegally on 1st January, 2011. In the detailed cross-examination of the petitioner as PW1 by Id. Dy. D.A., it is revealed that petitioner had worked upto December, 2010. The petitioner has specifically denied that she had abandoned the job of her own but certainly there is no *iota* of evidence on record suggesting that any notice was served upon the petitioner calling upon her to join duties. Moreover when respondent had removed the petitioner from service once and this Court has held that petitioner had not abandoned the job, respondent was required to issue notice prior to termination or must have paid retrenchment compensation envisaged under Section 25-F of the Act. Significantly, RW1 Parmod Kashyap, Executive Engineer, HPPWD Dharampur in cross-examination has admitted that when petitioner allegedly abandoned the job, no correspondence was made with her and has also admitted that petitioner had not been given retrenchment compensation as per record available in the office. Therefore this Court left with no option but to hold that respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947.

14. Ld. Counsel/Authorized Representative for the petitioner vehemently argued that respondent while retrenching the services of petitioner had also violated the provisions of Section 25-G of the Act. He has referred to para No.4 of the claim petition in which petitioner has specifically mentioned names of Prabhu Ram, Roshani Devi, Mamta Devi, Inder Singh, Ajay Kumar, Pradeep Kumar and Lekh Raj to have been appointed in 1998, 1999, 1999, 2000, 2000, 2004, 2007 and 2004 respectively. In cross-examination RW1 the respondent has specifically admitted that the names of worker mentioned in para No.4 of the claim petition as well as para no.2 of affidavit Ex. PW1/A were junior to petitioner who have been regularly working with the respondent/department. RW1 has also admitted that workers mentioned in para No.4 of the claim petition namely Mamta Devi, Inder Singh, Ajay Kumar, Pardeep Kumar and Lekh Raj had been appointed after termination of the services of the petitioner besides they were admittedly junior to the claimant/petitioner. Thus, retaining junior persons and retrenching services of senior person who happens to be claimant/petitioner, respondent had clearly violated the provisions of Section 25-G of the Act. It is therefore held that respondent had violated the provisions of Section 25-G of the Act.

15. In so far as the violation of the provisions of Section 25-H of the Act by the respondent, suffice would be to state here that one Smt. Chanchla Devi and Ramesh Kumar were appointed in 15-11-2011 and 27-9-2012 respectively as alleged in para No. 4 of the claim petition. In reply to said para, it is alleged that since petitioner had left the job at her own sweet will the worker as mentioned in the said para were engaged on compassionate ground and thus question of giving opportunity to petitioner did not arise and was no violation of Section 25-H of the Act. No record has been produced by the respondent so as to establish that Chanchla Devi and Ramesh Kumar had been appointed on compassionate ground. Certainly they were appointed much after termination of service of petitioner and this fact has not been disputed by the respondent. Thus, appointing fresh hands after termination of service of petitioner no opportunity had been given for re-employment to the petitioner which clearly violates the provisions of Section 25-H of the Act. The respondent could not wriggle out of its responsibility calling upon the petitioner to seek re-employment when it contemplated to engage said Chanchla Devi and Ramesh Kumar. Even in cross-examination of PW1 engagement of said Chanchla Devi and Ramesh Kumar were not repudiated by the Id. Dy. D.A. representing respondent thus the fact which is not disputed in cross-examination is held to have been proved and accordingly it is held that respondent had violated the provisions of Section 25-H of the Act as well. In view of the foregoing discussion, it can be safely concluded that the service of petitioner had been retrenched in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. Ld. Counsel/Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex

Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is *void ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, her termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages.

16. Ld. Counsel/Authorized representative for the petitioner vehemently argued that petitioner was illegally terminated in January, 2011 without any notice or retrenchment compensation who approached the office of the Labour Officer, Mandi where sufficient time took place and the Labour Officer, Mandi had submitted her failure report in the year 2015 in pursuance to which Labour Commissioner had referred petitioner's reference to Labour Court-cum-Industrial Tribunal for adjudication. on 31st August, 2016 and thereafter claim under Section 10 of Industrial Disputes Act was filed and has now reached at the stage of orders and thus sufficient explanation has been given for the delay moreso when the petitioner was unskilled labourer fell in the category of beldar and that matter was brought before Labour Officer, Mandi by issuing demand notice dated 28-1-2015. From January, 2011 to 28-1-2015, the petitioner claims to have approached authorities who did not pay heed to her request. Be it stated at this stage that once period of engagement has not been disputed in reply as well as in cross-examination and delay is recouring to legal remedy available under the Act in satisfactorily explained.

17. Ld. Dy. D.A. representing respondent/department has pointed out that retrenchment of petitioner in this case took place on December, 2010 and the industrial dispute was raised about 4 years from date of retrenchment. Repudiating the argument advanced by Ld. Dy. D.A., Ld. Counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in her evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, she was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches.

18. In so far as the plea of the claimant/petitioner that after her illegal termination by the respondent in January, 2011, petitioner remained out of job who had no income as alleged in para 6 of affidavit Ex. PW1/A besides having not been gainfully employed anywhere in the government or private organization due to which she was entitled for full back wages from illegal termination with consequential benefits. Reference is made to cross-examination of the petitioner by Ld. Dy. D.A. who has pointed out that petitioner has in unambiguous terms admitted that she had worked as daily wage labourer having cultivable land which establishes that petitioner had income from other source as well. Since claimant/petitioner had sufficient income from cultivable land and working as

daily wage labourer as admitted by him, it cannot be stated that she had no income after her termination as projected by petitioner as per claim. As such, it is held that petitioner is not entitled for back wages as claimed by her to be reinstated in service respondent having violated Section 25-F of Act besides petitioner would also be entitled for seniority and continuity in service from the date of demand notice dated 28-1-2015 in the circumstances of case. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court reported in **2014 LLR 673** titled as **Bhuvnesh Kumar Dwivedi Vs. M/s Hindalco Industries Ltd.** in which Hon'ble Apex Court has held that if the applicant/workman was wrongfully terminated, **the burden of proving that she was gainfully employed lies on the employer and if burden of proof is not discharged, workman would be entitled for full back wages.** In the case in hand, petitioner has led positive evidence stipulating therein that she was not gainfully employed after her illegal termination and that she has remained unemployed but she herself as admitted in cross-examination that she was having cultivable land and worked as labourer and thus she cannot be stated to have not remained gainfully employed.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there exists an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue of the respondent moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination in this case is whether reference made at such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have been taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful

termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manually work for respondent. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment (2016) *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law. Ld. AR/counsel for the petitioner has contended that termination of petitioner has been made in violation of provisions of Industrial Disputes Act, 1947. The petitioner is liable to be reinstated in service with full back wages. On the other hand Ld. Dy. D.A. has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which criteria to be taken into consideration by Labour Court in awarding compensation has been laid down. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

20. I have gone through the judgment relied upon by Ld. Dy. D.A. for respondent and of the view that judgment in Geetam Singh's case of (2013) does not apply to the case in hand in which Hon'ble Apex Court has laid down guidelines and factors to be considered by the Labour Court in cases involving violation of Industrial Disputes Act. In the case in hand before this Court, petitioner had promptly approached unlike in **Geetam Singh's** case when dispute was raised after six years and Hon'ble Apex Court instead of reinstatement of claimant/petitioner had awarded compensation but in the case in hand, demand notice was given to respondent after about 4 years besides delay was satisfactorily explained by petitioner as PW1. Since the judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)** had different facts particularly on delay in giving demand notice by petitioner before Hon'ble Apex Court after six years and the same not apply in the case in hand. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement with other consequential benefits instead of lump sum compensation. Issues No. 1 is decided in affirmative whereas issue No.4 is decided in negative and issue No.2 is decided as discussed and are answered accordingly.

Issue No. 3:

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised. Issue is thus answered in negative in favour of petitioner and against the respondent.

Relief

22. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages** from date of demand notice 28-1-2015, leaving the parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 758/2016
Date of Institution : 18-11-2016
Date of decision : 03-05-2018

Shri Gurbax Singh s/o Shri Lalman, r/o Village & Post Office Rit, Tehsil Jaisinghpur, Distt. Kangra, H.P. ...*Petitioner.*

Versus

1. The Principal Chief Conservator of Forests, Himachal Pradesh Shimla
2. The Divisional Forest Officer, Palampur, District Kangra, H.P.*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Gurbax Singh s/o Sh. Lalman r/o Village & P.O. Rit, Tehsil Jaisinghpur, Distt. Kangra, H.P. *w.e.f.* 1/4/2006 by (1) the Principal Chief Conservator of Forests, Himachal Pradesh, Shimla-171001 and (2) the Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis 1-4-1994 to 31-3-2006 and has raised his industrial dispute *vide* demand notice dated 15-6-2015 after more than 9 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll *w.e.f.* 01-4-1994

by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent *w.e.f.* 31-3-2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to re-engage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17-11-2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be re-engaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for re-engagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to re-engage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their re-engagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11-2-2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. *i.e.* Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar *w.e.f.* 5-9-1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31-12-2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice *qua* his illegal termination forwarding a copy to conciliation officer. After receipt of failure

report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference No.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP No. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition No. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been re-engaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent alongwith the petitioner had sought information under RTI Act and *vide* letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been re-engaged by respondent on 30-8-2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner *w.e.f.* 31-3-2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31-3-2006 with further direction to respondent to re-engage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply *inter-alia* taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to re-engage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5-9-1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest

Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of mandays chart/seniority list and closed evidence.

7. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed on 05-9-2017 for determination.

- (1) Whether termination of services of the petitioner by the respondents *w.e.f.* 01-04-2006 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad for non-joinder of necessary parties as alleged? ..*OPR.*
- (5) Whether the claim petition is bad on account of delay and laches on the part of petitioner alleged. If so, its effect ..*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Unpressed
Issue No. 4	: Unpressed
Issue No. 5	: No
Relief	: Petition is allowed per operative part of the

AWARD.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Co-operative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco-Development

Society was still in existence. It also remains the case of respondent that it cannot re-engage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to nonavailability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

12. Ld. Authorized Representative/Counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur Vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Nilajkar and others Vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) *supra* that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no *iota* of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Gurbax Singh figures at serial No. 39 who is shown to have been appointed on 01-4-1994 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1994 till 2006 immediately prior to his retrenchment.

13. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll *w.e.f.* April, 1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent *vide* verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and

that retrenchment notice was issued *qua* one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco-Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

14. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees, they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It is manifest from evidence on record that from November, 2009 and 2010 petitioner through correspondence from respondent have been assured about absorption in other government departments where several vacancies were lying vacant but till the raising industrial dispute and consequently reference of Labour Commissioner, Shimla, petitioner was not appointed or absorbed in the government departments. In his affidavit Ex. PW1/A petitioner has categorically maintained that despite verbal assurance given to petitioner and other retrenched workers but were not absorbed when demand notice dated 15-6-2015 was issued. Be it stated that these facts have remained unchallenged by respondent in cross-examination of petitioner. Thus, coupled with testimony of petitioner, it can be safely concluded that the fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. Counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference No. 117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department and was later deputed to work with IGCP Palampur. It has not been disputed by Ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award in favour of Bishan Dass had not been admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality which can also be inferred from reply to para No. 11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department and later with IGCP Palampur but on raising industrial dispute was re-engaged in service with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being re-engaged in job with seniority and continuity in service as consequential relief.

15. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in crossexamination that IGCP Palampur was under the complete control of State Government. It is also evident from evidence of respondents on record that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. Cross-examination of respondent RW1 showed that

after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. **However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur.** Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of re-engagement with past service benefits with respondent.

16. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh Vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is *void ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be *void ab-initio* as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para No. 22 of the judgment of (2013) that **"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"**.

17. In the case in hand before this court, the respondent in its reply has specifically alleged in para No. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the

sources from which income is generated, the end use being the same". Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be re-engaged with seniority and in continuity in service. Issue No.1 is thus answered holding that retrenchment of services of petitioner by respondent *w.e.f.* 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be re-engaged along-with seniority, past service benefits except back wages. Issues No. 1 and 2 are answered accordingly.

Issues No. 3 & 4:

18. Both these issues were not pressed by Ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondents.

Issue No. 5:

19. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31-3-2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Dy. D.A., Ld. Counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**, leaving the parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of May, 2016.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 579/2016
Date of Institution : 24-8-2016
Date of decision : 03-05-2018

Shri Vijay Kumar s/o Shri Nanak Chand, r/o Village Ballah, P.O. Rekh Bhawarna, Tehsil Palampur, Distt. Kangra, H.P. *...Petitioner.*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P. *....Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Vijay Kumar s/o Sh. Nanak Chand r/o Village Ballah P.O. Rekh Bhawarna, Tehsil Palampur, Distt. Kangra H.P. *w.e.f.* 1-4-2006, by the Divisional Forest Officer, Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis *w.e.f.* 2-2-1994, to 31-3-2006 and has raised his

industrial dispute *vide* demand notice dated 8-6-2015 after more than 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll *w.e.f.* 02-2-1994 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent *w.e.f.* 31-3-2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to re-engage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17-11-2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be re-engaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for re-engagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been re-engaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to re-engage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their re-engagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11-2-2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently

submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. *i.e.* Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar *w.e.f.* 5-9-1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31-12-2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference No.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP No. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition No. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been re-engaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent alongwith the petitioner had sought information under RTI Act and *vide* letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been re-engaged by respondent on 30-8-2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner *w.e.f.* 31-3-2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31-3-2006 with further direction to respondent to re-engage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply *inter-alia* taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non-joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to re-engage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5-9-1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his

sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, copy of letter dated 20-2-2009 Ex. PW1/B, copy of letter dated 12-5-2009 Ex. PW1/C, copy of letter dated 21-1-2010 Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of mandays chart/seniority list, copy of notice dated 22-2-2006 Ex. RW1/C and closed evidence.

7. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed on 05-9-2017 for determination:—

- (1) Whether termination of services of the petitioner by the respondents *w.e.f.* 01-04-2006 is/was illegal and unjustified as alleged? *..OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? *..OPR.*
- (4) Whether the claim petition is bad for non-joinder of necessary parties as alleged? *..OPR.*
- (5) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged. If so, its effect? *..OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	Unpressed
Issue No. 4	:	Unpressed
Issue No. 5	:	No
Relief	:	Petition is allowed per operative part of the

AWARD

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Co-operative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot re-engage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to nonavailability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

12. Ld. Authorized Representative/Counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur Vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Nilajkar and others Vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) *supra* that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no *iota* of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest

department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Vijay Kumar figures at serial No. 30 who is shown to have been appointed on 01-2-1994 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1994 till 2006 immediately prior to his retrenchment.

13. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll in the year 1994 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent *vide* verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco-Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

14. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees, they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It is manifest from evidence on record that from November, 2009 and 2010 petitioner through correspondence from respondent have been assured about absorption in other government departments where several vacancies were lying vacant but till the raising industrial dispute and consequently reference of Labour Commissioner, Shimla, petitioner was not appointed or absorbed in the government departments. In his affidavit Ex. PW1/A petitioner has categorically maintained that despite verbal assurance given to petitioner and other retrenched workers but were not absorbed when demand notice dated 8-6-2015 was issued. Be it stated that these facts have remained unchallenged by respondent in cross-examination of petitioner. Thus, coupled with testimony of petitioner, it can be safely concluded that the fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition

that said Bishan Dass was appointed as Beldar in forest department and was later deputed to work with IGCP Palampur. It has not been disputed by Id. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award in favour of Bishan Dass had not been admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality which can also be inferred from reply to para No.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department and later with IGCP Palampur but on raising industrial dispute was re-engaged in service with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being re-engaged in job with seniority and continuity in service as consequential relief.

15. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in crossexamination that IGCP Palampur was under the complete control of State Government. It is also evident from evidence of respondents on record that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changer Project, Palampur as stated above. Cross-examination of respondent RW1 showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. **However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur.** Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of re-engagement with past service benefits with respondent.

16. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Id. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh Vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void *ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void *ab-initio* as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para No. 22 of the judgment of (2013) that **“if the employer wants to deny back wages to the**

employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments”.

17. In the case in hand before this court, the respondent in its reply has specifically alleged in para No. 13 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same". Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be re-engaged with seniority and in continuity in service. Issue No.1 is thus answered holding that retrenchment of services of petitioner by respondent *w.e.f.* April, 2006 was illegal and unjustified and the petitioner is entitled to be re-engaged along-with seniority, past service benefits except back wages. Issues No. 1 and 2 are answered accordingly.

Issues No. 3 & 4:

18. Both these issues were not pressed by ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondents.

Issue No. 5:

19. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31-3-2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. Dy. D.A., ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-**

cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

Relief

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**, leaving the parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of May, 2016.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	756/2016
Date of Institution	:	18-11-2016
Date of decision	:	03-05-2018

Smt. Jagtamba Devi w/o late Shri Bhikham Singh, r/o Village & P.O. Rajpur, Tehsil Palampur, District Kangra, H.P.*Petitioner.*

Versus

1. The Divisional Forest Officer, Palampur, District Kangra, H.P.
 2. The Principal Chief Conservator of Forest, Himachal Pradesh Shimla, H.P.
-*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	Sh. N.L. Kaundal, AR
	:	Sh. Vijay Kaundal, Adv.
For the Respondent(s)	:	Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:—

“Whether termination of services of Smt. Jagtamba Devi w/o Late Sh. Bhikham Singh r/o Village & P.O. Rajpur, Tehsil Palampur, Distt. Kangra, H.P. *w.e.f.* 1-4-2006, by (1) the Principal Chief Conservator of Forests, Himachal Pradesh, Shimla-1 (2) the Divisional Forest Officer, Forest Division Palampur Distt. Kangra, H.P. who had worked as beldar on daily wages basis from 1-9-1993 to 31-3-2006 and has raised her industrial dispute *vide* demand notice dated 15-7-2015 after more than 9 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that she had been engaged on daily waged basis on muster roll *w.e.f.* 01-9-1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides she had also worked with Bishan Dass and Sushil Kumar and that she continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to her utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent *w.e.f.* 31-3-2006 without prior notice. On questioning the department about her retrenchment, she was informed that Government had decided to close the IGCP Palampur and her services were no more required. It is claimed that at the time of her unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to re-engage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17-11-2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be re-engaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government

departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for re-engagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been re-engaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to re-engage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their re-engagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed her willingness to respondent lastly on 11-2-2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. *i.e.* Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar *w.e.f.* 5-9-1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31-12-2001 without any break who had completed 240 days in each calendar year but her services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua her illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference No.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP No. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition No. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been re-engaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent alongwith the petitioner had sought information under RTI Act and *vide* letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been re-engaged by respondent on 30-8-2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner *w.e.f.* 31-3-2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31-3-2006 with further direction to respondent to re-engage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply *inter-alia* taken preliminary objections *qua* maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in

S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and her appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to re-engage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5-9-1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at her sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved her affidavit Ex. RW1/A, copy of mandays chart/seniority list Ex. RW1/B, copy of notice dated 20-2-2006 Ex. RW1/C and closed evidence.

7. I have heard the Authorized Representative/Counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed on 05-9-2017 for determination.

- (1) Whether termination of services of the petitioner by the respondents *w.e.f.* 01-04-2006 is/was illegal and unjustified as alleged? *..OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? *..OPR.*
- (4) Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR.*
- (5) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged. If so, its effect? *..OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Discussed

Issue No. 3	:	Unpressed
Issue No. 4	:	Unpressed
Issue No. 5	:	No
Relief	:	Petition is allowed per operative part of the

AWARD

REASONS FOR FINDINGS:

Issues No. 1 and 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco-Development Society registered with the Registrar Co-operative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot re-engage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh Vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to nonavailability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

12. Ld. Authorized Representative/Counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Nilajkar and others Vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) *supra* that workman ought to have been apprised or made aware of the fact that her employment would come to an end with the termination of scheme or project. In the case in hand, there is no *iota* of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed

only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Meenakshi Sood figures at serial No. 2 who is shown to have been appointed on 01-9-1993 and continued to work till 2006 when she was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to her retrenchment.

13. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex PW1/A stipulating therein that she had worked on daily wage basis on muster roll *w.e.f.* September, 1993 without any appointment order or without settlement of any terms and conditions of her service and that she had been deputed by respondent *vide* verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that she had worked with forest department however has denied that she has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but her seniority has been reflected in records of IGCP Palampur and that retrenchment notice was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to her office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to her office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco-Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

14. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees, they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It is manifest from evidence on record that from November, 2009 and 2010 petitioner through correspondence from respondent have been assured about absorption in other government departments where several vacancies were lying vacant but till the raising industrial dispute and consequently reference of Labour Commissioner, Shimla, petitioner was not appointed or absorbed in the government departments. In his affidavit Ex. PW1/A petitioner has categorically maintained that despite verbal assurance given to petitioner and other retrenched workers but were not absorbed when demand notice dated 15-6-2015 was issued. Be it stated that these facts have remained unchallenged by respondent in cross-examination of petitioner. Thus, coupled with testimony of petitioner, it can be safely concluded that the fact that government through its official

agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. Counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference No.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department and was later deputed to work with IGCP Palampur. It has not been disputed by Ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award in favour of Bishan Dass had not been admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality which can also be inferred from reply to para No.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department and later with IGCP Palampur but on raising industrial dispute was re-engaged in service with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being re-engaged in job with seniority and continuity in service as consequential relief.

15. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in crossexamination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Co-operative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. she was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19-11-2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. **However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur.** Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of re-engagement with past service benefits with respondent.

16. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh Vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, her termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para No. 22 of the judgment of (2013) that **"if the employer wants to deny back wages to the employee or contested her entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving her of the obligation to pay back wages including emoluments"**.

17. In the case in hand before this court, the respondent in its reply has specifically alleged in para No. 17 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that she was employed as agriculturist. This would also establish that after her retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same". Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after her retrenchment but was liable to be re-engaged with seniority and in continuity in service. Issue No.1 is thus answered holding that retrenchment of services of petitioner by respondent *w.e.f.* 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be re-engaged along-with seniority, past service benefits except back wages. Issues No. 1 and 2 are answered accordingly.

Issues No. 3 & 4:

18. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

Issue No. 5:

19. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31-3-2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. Counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**, leaving the parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref: No. : 89/15

Sh. Suresh Kumar s/o Shri Parma Ram, r/o Village Badresha, P.O. Brang, Tehsil Sarkaghat,
District Mandi, H.P. *..Petitioner.*

Versus

1. The Executive Engineer Dharampur Division, H.P.P.W.D. Dharampur, District Mandi, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Sarkaghat, Distt. Mandi, H.P. *..Respondents.*

04-05-2018 Present : Sh. Suresh Kumar Sharma, Adv. Csl. for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Heard. At this stage, Ld. Csl. for petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the Ld. Csl. for the petitioner as stated above, the reference No. 89/15 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.
5. The file, after completion be consigned to the records.

Announced:
04-05-2018

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 360/2016
Date of Institution : 27-05-2016
Date of Decision : 04-05-2018

Shri Ashok Kumar s/o Shri Charan Singh, r/o Village Dadheru, P.O. Sulyali, Tehsil Nurpur,
District Kangra, H.P. *....Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Ashok Kumar s/o Shri Charan Singh, r/o Village Dadheru, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. during April, 1989 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked as beldar on daily wages for 24 days during year, 1986, for 137 days during year, 1987, for 236 days during year, 1988 and for 31 days during year, 1989 respectively and has raised his industrial dispute after more than 22 years *vide* demand notice dated 23-7-2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 24 days during year, 1986, 137 days during year, 1987, for 236 days during year, 1988 and for 31 days during year, 1989 respectively and delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June, 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June, 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of "Last come First go" was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP no. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu

thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June, 1990 with prayer for being re-engaged in service with past seniority till re-engagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June, 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW- (A) A (1) 17/94 dated 21-7-1994. It is stated that petitioner had worked intermittently *w.e.f.* November, 1986 till March, 1989 and left the work at his own sweet will however emphatically denied that petitioner has completed 240 days in each calendar year. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial No.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial No.1 to 24 in para no.8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of letter dated 18-1-2000 Ex. RW1/D and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 09-10-2017 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondent during April, 1989 is/was improper and unjustified as alleged? ..OPP.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B petitioner is shown to have worked in the month of November, 1986 for a period of 24 days, in 1987 137 days, 236 days in 1988 and 31 days in 1989. As such, from mandays chart as aforesaid above, no inference of petitioner to have worked for 240 days immediately preceding 12 calendar months from termination could be drawn. PW1 Ashok Kumar, the petitioner has stepped into witness box has deposed on oath as maintained in claim petition. In cross-examination, he has admitted facts *qua* HPPWD Division Jassur existed in 1994 and thereafter HPPWD Jawali was made in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. In his affidavit Ex. PW1/A, petitioner has claimed to have worked from 1986 to June, 1990 but the mandays chart on record does not support his statement. RW1 Jagtar Singh, Executive Engineer, HPPWD, Jawali has denied this fact who clarified that according to their record petitioner had merely worked for 428 days. Otherwise also, in either situation, petitioner had not worked for 240 days. As such, uncorroborated testimony of petitioner could not be relied so as to hold that petitioner had factually worked for 240 days immediately prior to his termination in June 1990 and in that situation, it was not necessary for respondent to have resorted to procedure envisaged under Section 25-F of the Act. In so far as, plea of abandonment is concerned, same is to be proved like another fact in issue. Mere allegation of respondent that petitioner abandoned the job is not sufficient which was to be proved like any another fact in issue establishing that respondent issued notice calling upon petitioner to join duty which he did not do so and even did not depose that petitioner had abandoned the job. As such, plea of abandonment of job of petitioner raised by respondent merit rejection. It is admittedly not the case of respondent that any notice has been issued prior to termination or disengagement or any compensation was paid in lieu thereof. Accordingly, it is held that respondent not violated Section 25-F of the Act.

12. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under Section 25-G of the Act was not followed. In absence of seniority list, it could not be stated as to who were the juniors working at the time of petitioner under Jawali Division or prior to it under Jassur Division who had been retained and petitioner has been terminated. In so far as allegation of petitioner contained in para no.8 of affidavit is concerned, Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 but 24 others who joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen had been retained and petitioner was illegally terminated. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division on request and was posted at Sub Division Suliali under Nurpur Division. As such, Smt. Kusum Lata had at no point of time had worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No.8 of affidavit in Division Nurpur who neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions

of Section 25-G of the Act since petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under Section 25-F of the Act to the petitioner for re-employment. Be it stated that respondent in reply as well as on oath RW1 has denied material facts *qua* engagement of Kusum Lata and 24 others as mentioned in para No.8 of claim petition. As such, respondent is held to have neither violated Sections 25-G nor 25-H of the Act.

13. In so far as instead in reply filed by respondent, it has been categorically denied that Smt. Kusum Lata and 24 others had ever worked with Jassur Division. In so far as judgment titled as **State of Himachal Pradesh & another vs. Partap Singh** reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286**, the same is not applicable in this case as petitioner has failed to established that respondent had violated Section 25-G & 25-H of the Act. No other point was pressed or argued by Ld. Counsel for petitioner and Ld. Dy. D.A. representing respondent. No other point was pressed or argued by Ld. Counsel for petitioner and Ld. Dy. D.A. representing respondent.

14. In view of forgoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in March, 1989 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3:

15. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 4:

16. Ld. Counsel for the petitioner has relied upon judgment titled as **Inder Singh vs. State of H.P. through Secretary & Ors.** reported in **2016 (Vol.1) Himachal Law Reported (Fortnightly) 487**, in which Hon'ble High Court of H.P. has held that relief under the Act not be denied merely on ground of delay. Ld. Dy.D.A. for state has contended that there is long delay in this case unexplained. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same

is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors.**, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another**, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. Enough has been emphasized by Ld. Counsel for the petitioner that resolution had been sent by retrenched workmen to Registrar Hon'ble H.P. Administrative Tribunal in the year 1992 which has not been decided and nothing has been intimated to petitioner. Ld. Dy. D.A. on the other hand has argued that even if resolution so sent in 1992 as claimed had been sent by petitioner the same shall have no significance does not affect merits of case. Since petitioner has failed to establish violation of Section 25-F, 25-G and 25-H of the Act. Moreover, in view of settled provision of law that claim of petitioner cannot be defeated merely on ground of delay as has been discussed in foregoing paras.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

19. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 181/2016
Date of Institution : 26-03-2016
Date of Decision : 04-05-2018

Shri Uttam Chand s/o Shri Sadhu Ram, r/o Village Lakhwal, P.O. Sadwan, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Uttam Chand s/o Sh. Sadhu Ram, Village Lakhwal, P.O. Sadwan, Tehsil Nurpur, Distt. Kangra, H.P. from 8/1987, by the Executive Engineer, HPPWD Division, Jawali, Distt. Kangra, H.P. who had worked as beldar on daily wages basis only for 69 days and 124 days during the year 1986 and 1987 respectively and has raised his Industrial dispute *vide* demand notice dated 7-8-2013 after more than 26 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above mentioned and delay of more than 26 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June, 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June, 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla

which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of "Last come First go" was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June, 1990 with prayer for being re-engaged in service with past seniority till re-engagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June, 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It is stated that petitioner had worked intermittently *w.e.f.* August, 1986 till August, 1987 and left the work at his own sweet will however emphatically denied that petitioner has completed 240 days in each calendar year. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial No.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial No.1 to 24 in para No. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of letter dated 18-1-2000 Ex. RW1/D and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 09.10.2017 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondent from August, 1987 is/was improper and unjustified as alleged? ..OPP.

- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: No
Issue No. 4	: No
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B petitioner is shown to have worked in the year 1986 for a period of 69 days and 124 days in 1987. As such, from mandays chart as aforesaid above, no inference of petitioner to have worked for 240 days immediately preceding 12 calendar months from termination could be drawn. PW1 Babu Ram, the petitioner has stepped into witness box has deposed on oath as maintained in claim petition. In cross-examination, he has admitted facts qua HPPWD Division Jassur existed in 1994 and thereafter HPPWD Jawali was made in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. In his affidavit Ex. PW1/A, petitioner has claimed to have worked from 1986 to June, 1990 but the mandays chart on record does not support his statement. RW1 Jagtar Singh, Executive Engineer, HPPWD, Jawali has denied this fact who clarified that according to their record petitioner had merely worked for 193 days. Otherwise also, in either situation, petitioner had not worked for 240 days. As such, uncorroborated testimony of petitioner could not be relied so as to hold that petitioner had factually worked for 240 days immediately prior to his termination in August, 1987 and in that situation, it was not necessary for respondent to have resorted to procedure envisaged under section 25-F of the Act. In so far as, plea of abandonment is concerned, same is to be proved like another fact in issue. Mere allegation of respondent that petitioner abandoned the job is not sufficient which was to be proved like any other fact in issue establishing that respondent issued notice calling upon petitioner to join duty which he did not do so and even did not depose that petitioner had abandoned the job. As such, plea of abandonment of job of petitioner raised by respondent merit rejection. It is admittedly not the case of respondent that any notice has been issued prior to termination or disengagement or any compensation was paid in lieu thereof. Accordingly, it is held that respondent not violated Section 25-F of the Act.

12. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under section 25-G of the Act was not followed. In absence of seniority list, it could not be stated as to who were the juniors working at the time of petitioner under Jawali Division or prior to it under Jassur Division who had been retained and petitioner has been terminated. In so far as allegation of petitioner contained in para No. 8 of affidavit is concerned, Smt. Kusum Lata was

engaged by Engineer-in-Chief in 2000 but 24 others who joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen had been retained and petitioner was illegally terminated. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division on request and was posted at Sub Division Suliali under Nurpur Division. As such, Smt. Kusum Lata had at no point of time had worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 8 of affidavit in Division Nurpur who neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act since petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under section 25-F of the Act to the petitioner for re-employment. Be it stated that respondent in reply as well as on oath RW1 has denied material facts *qua* engagement of Kusum Lata and 24 others as mentioned in para No. 8 of claim petition. As such, respondent is held to have neither violated Sections 25-G nor 25-H of the Act.

13. In so far as instead in reply filed by respondent, it has been categorically denied that Smt. Kusum Lata and 24 others had ever worked with Jassur Division. In so far as judgment titled as **State of Himachal Pradesh & another vs. Partap Singh** reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286**, the same is not applicable in this case as petitioner has failed to established that respondent had violated Section 25-G & 25-H of the Act. No other point was pressed or argued by Ld. Counsel for petitioner and Ld. Dy. D.A. representing respondent. No other point was pressed or argued by Ld. Counsel for petitioner and Ld. Dy. D.A. representing respondent.

14. In view of forgoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in August, 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3:

15. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 4:

16. Ld. Counsel for the petitioner has relied upon judgment titled as **Inder Singh vs. State of H.P. through Secretary & Ors.** reported in **2016 (Vol.1) Himachal Law Reporter (Fortnightly) 487**, in which Hon'ble High Court of H.P. has held that relief under the Act not be denied merely on ground of delay. Ld. Dy.D.A. for state has contended that there is long delay in this case unexplained. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC &**

another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. Enough has been emphasized by Ld. Counsel for the petitioner that resolution had been sent by retrenched workmen to Registrar Hon'ble H.P. Administrative Tribunal in the year 1992 which has not been decided and nothing has been intimated to petitioner. Ld. Dy. D.A. on the other hand has argued that even if resolution so sent in 1992 as claimed had been sent by petitioner the same shall have no significance does not affect merits of case. Since petitioner has failed to establish violation of Section 25-F, 25-G and 25-H of the Act. Moreover, in view of settled provision of law that claim of petitioner cannot be defeated merely on ground of delay as has been discussed in foregoing paras.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

19. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	312/2016
Date of Institution	:	12-05-2016
Date of Decision	:	04-05-2018

Shri Sher Singh s/o Shri Charan Singh, r/o Village Thatheru, P.O. Sulyali, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Sher Singh s/o Shri Charan Singh, r/o Village Thatheru, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. during December, 1990 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated 23-07-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June, 1990 besides alleged to have completed 240 days in each calendar year. It is

alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June, 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of "Last come First go" was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June, 1990 with prayer for being re-engaged in service with past seniority till re-engagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June, 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW- (A) A (1) 17/94 dated 21-7-1994. It is denied that petitioner had worked with the respondent from 1986 to 1990 however contended that petitioner had never worked with the respondent and as such question of completion of 240 days did not arise. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial No.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial No.1 to 24 in para No.8 of the claim petition were engaged under Nurpur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A. and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of Notification dated 21-7-1994 Ex. RW1/B, copy of letter dated 18-1-2000 Ex. RW1/C and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-9-2017 for determination which are as under:—

- (1) Whether termination of services of the petitioner by the respondent during December, 1990 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on ground of delay and laches as alleged? ..*OPR*.
Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	Yes
Issue No. 4	:	Redundant
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that no mandays chart has been produced or proved by either party showing that petitioner had been factually engaged by respondent from May, 1986 to June, 1990. The plea of respondent as can be seen from reply on record show that petitioner was never engaged by respondent and therefore question of petitioner having completed 240 days and thereafter being retrenchment as claimed did not arise. As such, it was the petitioner who had to prove that he had worked under respondent for the period as alleged in claim petition and thereafter illegally terminated.

12. To prove his case petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The testimony of petitioner has not been corroborated by any co-worker who might have worked with him and as such uncorroborated testimony of petitioner cannot be relied as respondent has specifically denied relationship of petitioner being employee of respondent at any point of time. RW1 has repudiated claim of the petitioner in entirety although tendered Notification dated 21-7-1994 Ex. RW1/B and letter dated 18-8-1994 Ex. RW1/C. Cross-examination of RW1 reveals that according to record available in the office petitioner had neither been engaged nor worked under HPPWD Division Jassur and thereafter with HPPWD Division Jawali.

13. Ld. Counsel for the petitioner has contended that since reference has been received from appropriate govt. it necessarily follows that some conciliation proceedings had taken place before Conciliation Officer followed by submission of failure report under section 12(4) of the Act

consequent upon which reference has been received which establishes existence of industrial dispute *inter-se* parties. On the other hand, Ld. Dy. D.A. for the State has contended that even in proceedings before the Conciliation Officer similar stand had been taken *i.e.* respondent having not been engaged petitioner at any point of time. In such like situation when petitioner alleged that conciliation proceedings which ended in failure report, the best evidence *qua* petitioner having been engaged could be proved producing reply filed by the respondent before Conciliation Officer which has not been done in this case. In absence of the same by withholding best evidence available with the petitioner, an adverse inference has been drawn against the petitioner's claim. Accordingly, when petitioner has failed to prove to have worked with the respondent, it was not necessary for the respondent to have resorted to procedure envisaged for retrenchment under section 25-F of the Act *i.e.* issuance of one month notice or compensation in lieu thereof. As such, judgment of Hon'ble High Court of H.P. reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286** titled as **State of Himachal Pradesh & another vs. Partap Singh** relied upon by Ld. Counsel for petitioner is not attracted and for similar reasons, respondent is held to have not violated provisions of Sections 25-G and 25-H of the Act as petitioner failed to prove having been engaged by respondent as claimed.

14. In view of the foregoing discussions, petitioner is held not entitled to any relief as claimed by him. Accordingly, issue No.1 is answered in negative holding that respondent has not terminated service of petitioner in the month of June, 1990 & has thus not violated Section 25-F, 25-G and 25-H of the Act and for said reason, petitioner is not entitled for any consequential service benefits as claimed. Issue No.2 is thus answered in negative. In so far as issue No.3 *qua* maintainability of claim petition, suffice would be to state here that when petitioner had not been engaged by respondent at any point of time as discussed in foregoing paras, the petition so moved could not stated to be maintainable. This issue is answered in affirmative against the petitioner in favour of respondent. All the issues stated above are decided against petitioner and in favour of respondent.

Issue No. 4:

15. As has been discussed in foregoing paras that petitioner was not engaged by the respondent, the plea of claim petition being bad on account of delay and laches does not arise and for said reason judgment reported in **2016 (1) Himachal Law Reporter 487** titled as **Inder Singh vs. State of H.P.** relied upon by Ld. Counsel for the petitioner is not attracted. This issue is answered accordingly.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 132/2016
Date of Institution : 17-03-2016
Date of Decision : 04-05-2018

Shri Nathu Ram s/o Shri Gurdyal Singh, r/o Village and Post Office Sulyali, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Nathu Ram s/o Shri Gurdyal Singh, r/o Village and Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. during April 1988 by the Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P., who had worked as beldar on daily wages only for 197 ½ days and 76 days in year 1987 & 1988 and has raised his industrial dispute after about 23 years *vide* demand notice dated 23-07-2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 197 ½ days and 76 days in year 1987 & 1988 respectively and delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla

which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of "Last come First go" was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June 1990 with prayer for being re-engaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW- (A) A (1) 17/94 dated 21-7-1994. It is stated that petitioner had worked intermittently *w.e.f.* February 1987 till April, 1988 and left the work at his own sweet will however emphatically denied that petitioner has completed 240 days in each calendar year. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no.1 to 24 in para no. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A. Petitioner has also examined one Shri Hardev Singh PW2, tendered/proved his affidavit Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of letter dated 18-1-2000 Ex. RW1/D and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-9-2017 for determination which are as under:—

- (1) Whether termination of services of the petitioner by the respondent during April 1988 is/was illegal and unjustified as alleged? ..OPP.

(2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.

(3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

(4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B petitioner is shown to have worked in 1987 petitioner had worked in the months of February, March, April, June, July, September, October and November for 202½ days, in 1988, in the months of January, March & April for 76 days when petitioner was disengaged. As such, from mandays chart as stated-above, no inference of petitioner to have worked for 240 days immediately preceding 12 calendar months from termination could be drawn. PW1 Ramesh Chand, the petitioner stepped into witness box has deposed on oath has maintained in claim petition. In cross-examination he has admitted facts qua HPPWD Division Jassur existed in 1994 which was consequently made HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994 in his affidavit Ex. PW1/A. Be it stated that, petitioner has claimed to have worked from 1986 to June 1990 but the mandays chart on record does not support his statement. PW2 Shri Hardev Singh s/o Sh. Harnam Singh, VPO Suliali, Tehsil Nurpur, District Kangra, H.P. has fully supported case of petitioner but being an interested witness has deposed contrary to documentary evidence *i.e.* mandays chart on record who cannot be believed for petitioner having worked from 1987 to 1990 as per mandays chart petitioner had not worked after April 1988 moreso when petitioner had not worked under Suliali Sub-Division or Nurpur Division. As such, testimony of PW2 cannot be believed and relied qua plea of petitioner. RW1 Jagtar Singh has denied this fact who clarified that according to their record petitioner had merely worked for 12 days as reflected in mandays chart otherwise, in either situation petitioner had not worked for 240 days and thus it cannot be held that petitioner had factually worked for 240 days immediately prior to his termination in the month of April 1988 and for said reason respondent was not required to have resorted to procedure envisaged under Section 25-F of the Act. In so far as, plea of abandonment is concerned, same is to be proved like another fact in issue. Mere allegation of respondent that petitioner abandoned the job is not sufficient which was to be proved like any another fact in issue establishing that respondent issued notice calling upon petitioner to join duty which he did not do so and even did not depose that petitioner had abandoned the job. As such, plea of abandonment of job of petitioner raised by respondent merit rejection. It is admittedly not the case of respondent that any notice has been issued prior to termination or disengagement or any compensation was paid in lieu thereof. For aforesaid reasons

judgment titled as **State of Himachal Pradesh & another vs. Partap Singh** reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286** relied by ld. counsel for petitioner is not attracted in this case. Accordingly, it is held that respondent has not violated Section 25-F (a) (b) (c) of the Act.

12. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under Section 25-G of the Act was not followed. In absence of seniority list, it could not be stated as who were the junior working at the time of petitioner under Jawali Division or prior to it under Jassur Division who had been retained and petitioner has been terminated. In so far as allegation of petitioner as contained in para no.8 of affidavit is concerned that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and 24 others who joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen had been retained and petitioner was illegally terminated.

13. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division on request and she was posted as Sub-Division Suliali under HPPWD Nurpur Division. As such, Smt. Kusum Lata had at no point of time had worked under Jassur Division. Similarly, 24 persons joined as mentioned in para no.8 of affidavit in Division Nurpur had not been engaged either in Division Jassur of HPPWD which has since been renamed at Jawali HPPWD Division. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service by respondent arbitrarily in violation of provisions of Section 25-G of the Act since petitioner has failed to establish retention of any junior or engagement of junior by respondent at all who was not under any obligation to issue notice under Section 25-G of the Act and similarly under 25-H to the petitioner for reemployment while engaging any junior. Be it stated that RW1 has denied material facts qua engagement of Kusum Lata and 24 others as mentioned in para no.8 of claim petition as well as affidavit of petitioner Ex. PW1/A which established that workers engaged did not work under Jassur HPPWD Division which has now been renamed as Jawali HPPWD Division. Accordingly, respondent is held to have not violated Sections 25-G and 25-H of the Act.

14. No other point was pressed or argued by ld. counsel for petitioner and Ld. Dy. D.A. representing respondent.

14-A. In view of foregoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in April 1988 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3:

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 4:

16. Ld. counsel for the petitioner has relied upon judgment titled as **Inder Singh vs. State of H.P. through Secretary & Ors.** reported in **2016 (Vol.1) Himachal Law Reporter**

(Fortnightly) 487, in which Hon'ble High Court of H.P. has held that relief under the Act not be denied merely on ground of delay. Ld. Dy.D.A. for state has contended that there is long delay in this case unexplained. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Enough has been emphasized by ld. counsel for petitioner that some resolution had been sent to Registrar Hon'ble State Administrative Tribunal in the year 1992 due to which dispute could be raised earlier but as delay is approaching this court is not the criteria to deny relief sought for and even if it is accepted that some resolution had been sent in 1992, it shall have no bearing on merits of case. As such, even when resolution in question has not been replied, the same would not attract merit of this case in any manner. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

18. As a sequel to my findings on foregoing issues no.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	271/2016
Date of Institution	:	04-05-2016
Date of Decision	:	04-05-2018

Shri Shamsher Singh s/o Shri Bhirroo Ram, r/o Village and Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Shamsher Singh s/o Shri Bhirroo Ram, r/o Village and Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. during December 1990 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated 23-07-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur),

H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of "Last come First go" was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June 1990 with prayer for being reengaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW- (A) A (1) 17/94 dated 21-7-1994. It is denied that petitioner had worked with the respondent from 1986 to 1990 however contended that petitioner had never worked with the respondent and as such question of completion of 240 days did not arise. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no. 1 to 24 in para no. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A. Petitioner has also examined one Shri Hardev Singh PW2, tendered/proved his affidavit Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh

Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of Notification dated 21-7-1994 Ex. RW1/B, copy of letter dated 18-1-2000 Ex. RW1/C and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-9-2017 for determination which are as under:—

- (1) Whether termination of services of the petitioner by the respondent during December 1990 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on ground of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	Yes
Issue No. 4	:	Redundant
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that no mandays chart has been produced or proved by either party showing that petitioner had been factually engaged by respondent from May 1986 to June 1990. The plea of respondent as can be seen from reply on record show that petitioner was never engaged by respondent and therefore question of petitioner having completed 240 days and having been retrenched as claimed did not arise. As such, it was for the petitioner to have proved that he had factually worked under respondent for the period as alleged in claim petition.

12. To prove his case, petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition to have remained engaged from May 1986 to June 1990 when service of petitioner had been illegally terminated by respondent. Be it stated that respondent has specifically denied relationship of petitioner being workman/beldar of respondent at any point of time. RW1 has repudiated the claim of the petitioner in entirety although tendered Notification dated 21-7-1994 Ex. RW1/B and letter dated 18-8-1994 Ex. RW1/C which established creation of Jawali HPPWD Division in 1994. Cross-examination of RW1 reveals that according to record

available in the office petitioner had never worked under HPPWD Division Jassur and consequently Jawali HPPWD Division.

13. PW2 Hardev Singh has fully supported case of petitioner who has sworn in affidavit Ex. PW2/A in which he has stated that he was appointed as Supervisor on daily wage basis on 1st January, 1986 at HPPWD Jassur which was later got merged /shifted to Jawali Division however himself was regularized on 1-1-1996 and retired from service of HPPWD in August 2004 from Sub-Division Suliali. He has stated that petitioner remained engaged as beldar under his supervision from 1987 to 1990. Cross-examination of this witness reveals that he had worked in Suliali Sub Division which was under Nurpur Division in the year 1994. He has categorically deposed in cross-examination that he worked under Sub Division Suliali where about 400 workers had been engaged and to whom he supervised but did not know their names. He has denied that petitioner had never worked under him under Jassur Division but minute scrutiny of his testimony in cross-examination shows that petitioner was resident of village of this witness who knew him from childhood and is highly interested witness. Although in affidavit Ex. PW2/A has claimed to have remained Supervisor under HPPWD Jassur but factually this witness has worked only in Sub-Division Suliali which was under HPPWD Nurpur where petitioner could not have been engaged at any point of time. As such, testimony of PW2 that petitioner had worked under his supervision cannot be believed which could be proved only if petitioner was engaged under Sub-Division Suliali where PW2 was Supervisor. Even if it accepted that PW2 was supervisor of petitioner he could not remember names of beldars but could tell exact period for which petitioner worked without referring to any record moreso when he had retired in 2004 and deposing before this court in 2018 almost after 14 years which shows that he was tutored witness besides being interested witness whose testimony cannot be relied so as to hold that petitioner being beldar worked under him rather petitioner never worked under Sub-Division Suliali where this witness was initially engaged as Supervisor in 1986 and petitioner was not engaged by respondent. As such, testimony of PW2 does not inspire confidence and same cannot be relied so as to hold that petitioner had worked under supervision of PW2 at any point of time. In view of the foregoing discussions, petitioner is held not entitled to any relief as claimed by him.

14. Ld. counsel for the petitioner has contended that as the reference has been received from appropriate govt. it necessarily follows that some conciliation proceedings had taken place before Conciliation Officer followed by submission of failure report under Section 12(4) of the Act consequent upon which reference has been received which establishes existence of industrial dispute. On the other hand, ld. Dy. D.A. for the State has contended that even in proceedings before the Conciliation Officer similar stand was maintained *i.e.* respondent having not been engaged by petitioner at any point of time. In such like situation when petitioner alleged that conciliation proceedings which ended in failure report, the best evidence qua petitioner having been engaged could be proved by bringing on record the reply filed by the respondent before Conciliation Officer which has not been done in this case. In absence of the same by withholding best evidence available with the petitioner, an adverse inference has been drawn against the petitioner's claim. Accordingly, when petitioner has failed to prove to have worked with the respondent, it was not necessary for the respondent to have resorted to procedure envisaged for retrenchment under Section 25-F of the Act. Accordingly, issue no.1 is answered in negative holding that respondent has not terminated service of petitioner in the month of June 1990 & has thus not violated Section 25-F and for said reason procedure under Section 25-F of Act was not to be resorted by respondent and for similar reasons judgment reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286** titled as **State of Himachal Pradesh & another vs. Partap Singh** relied upon by ld. counsel for petitioner is not attracted in petitioner's case the Act and for said reason also did not violate Section 25-G and 25-H of Act and petitioner is not entitled for any consequential service benefits as claimed. Issue no. 2 is thus answered in negative. In so far as issue no. 3 qua maintainability of claim petition, suffice would be to state here that when petitioner had not been

engaged by respondent at any point of time as discussed in foregoing paras, the petition so moved could not stated to be maintainable. This issue is answered in affirmative against the petitioner in favour of respondent. All the issues stated above are decided against petitioner and in favour of respondent.

Issue No. 4:

15. As has been discussed in foregoing paras that petitioner was not engaged by the respondent, the plea of claim petition being bad on account of delay and laches becomes redundant. This issue is answered accordingly.

Relief:

16. As a sequel to my findings on foregoing issues no.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	:	259/2016
Date of Institution	:	03-05-2016
Date of Decision	:	04-05-2018

Shri Surjit Kumar s/o Shri Roshan Lal, r/o Village and Post Office Sulyali, Tehsil Nurpur,
District Kangra, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Surjit Kumar s/o Shri Roshan Lal, r/o Village and Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. during December 1990 by the Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated 23-07-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of "Last come First go" was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June 1990 with prayer for being reengaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW- (A) A (1)

17/94 dated 21.7.1994. It is denied that petitioner had worked with the respondent from 1986 to 1990 however contended that petitioner had never worked with the respondent and as such question of completion of 240 days did not arise. In so far resolution of retrenched workers sent to Assistant Registrar, Hon^{ble} Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no.1 to 24 in para no.8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A. Petitioner has also examined one Shri Hardev Singh PW2, tendered/proved his affidavit Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of Notification dated 21-7-1994 Ex. RW1/B, copy of letter dated 18-1-2000 Ex. RW1/C and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-9-2017 for determination which are as under:—

- (1) Whether termination of services of the petitioner by the respondent during December 1990 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on ground of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Redundant

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that no mandays chart has been produced or proved by either party showing that petitioner had been factually engaged by respondent from May 1986 to June 1990. The plea of respondent as can be seen from reply on record show that petitioner was never engaged by respondent and therefore question of petitioner having completed 240 days and having been retrenched as claimed did not arise. As such, it was for the petitioner to have proved that he had factually worked under respondent for the period as alleged in claim petition.

12. To prove his case, petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition to have remained engaged from May 1986 to June, 1990 when service of petitioner had been illegally terminated by respondent. Be it stated that respondent has specifically denied relationship of petitioner being workman/beldar of respondent at any point of time. RW1 has repudiated the claim of the petitioner in entirety although tendered Notification dated 21-7-1994 Ex. RW1/B and letter dated 18-8-1994 Ex. RW1/C which established creation of Jawali HPPWD Division in 1994. Cross-examination of RW1 reveals that according to record available in the office petitioner had never worked under HPPWD Division Jassur and consequently Jawali HPPWD Division.

13. PW2 Hardev Singh has fully supported case of petitioner who has sworn in affidavit Ex. PW2/A in which he has stated that he was appointed as Supervisor on daily wage basis on 1st January, 1986 at HPPWD Jassur which was later got merged /shifted to Jawali Division however himself was regularized on 1-1-1996 and retired from service of HPPWD in August 2004 from Sub-Division Suliali. He has stated that petitioner remained engaged as beldar under his supervision from 1987 to 1990. Cross-examination of this witness reveals that he had worked in Suliali Sub Division which was under Nurpur Division in the year 1994. He has categorically deposed in cross-examination that he worked under Sub Division Suliali where about 400 workers had been engaged and to whom he supervised but did not know their names. He has denied that petitioner had never worked under him under Jassur Division but minute scrutiny of his testimony in cross-examination shows that petitioner was resident of village of this witness who knew him from childhood and is highly interested witness. Although in affidavit Ex. PW2/A has claimed to have remained Supervisor under HPPWD Jassur but factually this witness has worked only in Sub-Division Suliali which was under HPPWD Nurpur where petitioner could not have been engaged at any point of time. As such, testimony of PW2 that petitioner had worked under his supervision cannot be believed which could be proved only if petitioner was engaged under Sub-Division Suliali where PW2 was Supervisor. Even if it accepted that PW2 was supervisor of petitioner he could not remember names of beldars but could tell exact period for which petitioner worked without referring to any record moreso when he had retired in 2004 and deposing before this court in 2018 almost after 14 years which shows that he was tutored witness besides being interested witness whose testimony cannot be relied so as to hold that petitioner being beldar worked under him rather petitioner never worked under Sub-Division Suliali where this witness was initially engaged as Supervisor in 1986 and petitioner was not engaged by respondent. As such, testimony of PW2 does not inspire confidence and same cannot be relied so as to hold that petitioner had worked under supervision of PW2 at any point of time. In view of the foregoing discussions, petitioner is held not entitled to any relief as claimed by him.

14. Ld. counsel for the petitioner has contended that as the reference has been received from appropriate govt. it necessarily follows that some conciliation proceedings had taken place before Conciliation Officer followed by submission of failure report under Section 12(4) of the Act consequent upon which reference has been received which establishes existence of industrial dispute. On the other hand, ld. Dy. D.A. for the State has contended that even in proceedings before the Conciliation Officer similar stand was maintained *i.e.* respondent having not been engaged by petitioner at any point of time. In such like situation when petitioner alleged that conciliation proceedings which ended in failure report, the best evidence qua petitioner having been engaged could be proved by bringing on record the reply filed by the respondent before Conciliation Officer which has not been done in this case. In absence of the same by withholding best evidence available with the petitioner, an adverse inference has been drawn against the petitioner's claim. Accordingly, when petitioner has failed to prove to have worked with the respondent, it was not necessary for the respondent to have resorted to procedure envisaged for retrenchment under Section 25-F of the Act. Accordingly, issue no.1 is answered in negative holding that respondent has not terminated service of petitioner in the month of June 1990 & has thus not violated Section 25-F and for said reason procedure under Section 25-F of Act was not to be resorted to by respondent and for similar reasons judgment reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286** titled as **State of Himachal Pradesh & another vs. Partap Singh** relied upon by ld. counsel for petitioner is not attracted in petitioner's case the Act and for said reason also did not violate Section 25-G and 25-H of Act and petitioner is not entitled for any consequential service benefits as claimed. Issue no. 2 is thus answered in negative. In so far as issue no.3 qua maintainability of claim petition, suffice would be to state here that when petitioner had not been engaged by respondent at any point of time as discussed in foregoing paras, the petition so moved could not be stated to be maintainable. This issue is answered in affirmative against the petitioner in favour of respondent. All the issues stated above are decided against petitioner and in favour of respondent.

Issue No. 4:

15. As has been discussed in foregoing paras that petitioner was not engaged by the respondent, the plea of claim petition being bad on account of delay and laches becomes redundant. This issue is answered accordingly.

Relief:

16. As a sequel to my findings on foregoing issues no.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 262/2016
Date of Institution : 03-05-2016
Date of Decision : 04-05-2018

Shri Ramesh Chand s/o Shri Beli Ram, r/o Village Dadheru, P.O. Suliali, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Ramesh Chand s/o Shri Beli Ram, r/o Village Dadheru, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. during March 1987 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked as beldar on daily wages for 60 days during year 1986 and 14 days during year 1987 respectively and has raised his industrial dispute after more than 24 years *vide* demand notice dated 23-7-2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 60 days during year 1986 and 14 days during year 1987 respectively and delay of more than 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla

which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of "Last come First go" was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June 1990 with prayer for being reengaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It is stated that petitioner had worked intermittently *w.e.f.* November 1987 till March 1987 and left the work at his own sweet will however emphatically denied that petitioner has completed 240 days in each calendar year. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no.1 to 24 in para no.8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A. Petitioner has also examined one Shri Hardev Singh PW2, tendered/proved his affidavit Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of letter dated 18-1-2000 Ex. RW1/D and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-9-2017 for determination which are as under:—

- (1) Whether termination of services of petitioner by the respondent during March 1987 is/was improper and unjustified as alleged? ..*OPP*.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on ground of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B petitioner is shown to have worked in 1986 petitioner had worked in the months of November & December for 60 days and in March 1987 for 14 days when petitioner was disengaged. As such, from mandays chart as stated-above, no inference of petitioner to have worked for 240 days immediately preceding 12 calendar months from termination could be drawn. PW1 Ramesh Chand, the petitioner stepped into witness box has deposed on oath has maintained in claim petition. In cross-examination he has admitted facts qua HPPWD Division Jassur existed in 1994 which was consequently made HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994 in his affidavit Ex. PW1/A. Be it stated that, petitioner has claimed to have worked from 1986 to June 1990 but the mandays chart on record does not support his statement. PW2 Shri Hardev Singh s/o Sh. Harnam Singh, VPO Suliali, Tehsil Nurpur, District Kangra, H.P. has fully supported case of petitioner but being an interested witness has deposed contrary to documentary evidence *i.e.* mandays chart on record who cannot be believed for petitioner having worked from 1987 to 1990 as per mandays chart petitioner had not worked after March 1987 moreso when petitioner had not worked under Suliali Sub-Division or Nurpur Division. As such, testimony of PW2 cannot be believed and relied qua plea of petitioner. RW1 Jagtar Singh has denied this fact who clarified that according to their record petitioner had merely worked for 74 days as reflected in mandays chart otherwise, in either situation petitioner had not worked for 240 days and thus it cannot be held that petitioner had factually worked for 240 days immediately prior to his termination in the month of June 1990 and for said reason respondent was not required to have resorted to procedure envisaged under Section 25-F of the Act. In so far as, plea of abandonment is concerned, same is to be proved like another fact in issue. Mere allegation of respondent that petitioner abandoned the job is not sufficient which was to be proved like any another fact in issue establishing that respondent issued notice calling upon petitioner to join duty which he did not do so and even did not depose that petitioner had abandoned the job. As such, plea of abandonment of job of petitioner raised by

respondent merit rejection. It is admittedly not the case of respondent that any notice has been issued prior to termination or disengagement or any compensation was paid in lieu thereof. For aforesaid reasons judgment titled as **State of Himachal Pradesh & another vs. Partap Singh** reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286** relied by ld. counsel for petitioner is not attracted in this case. Accordingly, it is held that respondent has not violated Section 25-F (a) (b) (c) of the Act.

12. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under Section 25-G of the Act was not followed. In absence of seniority list, it could not be stated as who were the junior working at the time of petitioner under Jawali Division or prior to it under Jassur Division who had been retained and petitioner has been terminated. In so far as allegation of petitioner as contained in para no. 8 of affidavit is concerned that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and 24 others who joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen had been retained and petitioner was illegally terminated.

13. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division on request and she was posted as Sub-Division Suliali under HPPWD Nurpur Division. As such, Smt. Kusum Lata had at no point of time had worked under Jassur Division. Similarly, 24 persons joined as mentioned in para no.8 of affidavit in Division Nurpur had not been engaged either in Division Jassur of HPPWD which has since been renamed at Jawali HPPWD Division. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service by respondent arbitrarily in violation of provisions of Section 25-G of the Act since petitioner has failed to establish retention of any junior or engagement of junior by respondent at all who was not under any obligation to issue notice under Section 25-G of the Act and similarly under 25-H to the petitioner for reemployment while engaging any junior. Be it stated that RW1 has denied material facts qua engagement of Kusum Lata and 24 others as mentioned in para no.8 of claim petition as well as affidavit of petitioner Ex. PW1/A which established that workers engaged did not work under Jassur HPPWD Division which has now been renamed as Jawali HPPWD Division. Accordingly, respondent is held to have not violated Sections 25-G and 25-H of the Act.

14. No other point was pressed or argued by ld. counsel for petitioner and Ld. Dy. D.A. representing respondent.

14-A. In view of foregoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in March, 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3:

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 4:

16. Ld. counsel for the petitioner has relied upon judgment titled as **Inder Singh vs. State of H.P. through Secretary & Ors.** reported in **2016 (Vol.1) Himachal Law Reporter (Fortnightly) 487**, in which Hon'ble High Court of H.P. has held that relief under the Act not be denied merely on ground of delay. Ld. Dy.D.A. for state has contended that there is long delay in this case unexplained. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Enough has been emphasized by Ld. counsel for petitioner that some resolution had been sent to Registrar Hon'ble State Administrative Tribunal in the year 1992 due to which dispute could be raised earlier but as delay is approaching this court is not the criteria to deny relief sought for and even if it is accepted that some resolution had been sent in 1992, it shall have no bearing on merits of case. As such, even when resolution in question has not been replied, the same would not attract merit of this case in any manner. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

18. As a sequel to my findings on foregoing issues no.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 263/2016
Date of Institution : 03-05-2016
Date of Decision : 04-05-2018

Shri Vijay Kumar s/o Shri Munshi Ram, r/o Village and Post Office Sulyali, Tehsil Nurpur,
District Kangra, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Vijay Kumar s/o Shri Munshi Ram, r/o Village and Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. during June 1988 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 23 years *vide* demand notice dated 23-07-2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of "Last come First go" was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June, 1990 with prayer for being reengaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It is stated that petitioner had worked intermittently *w.e.f.* April 1986 till June 1988 and left the work at his own sweet will however emphatically denied that petitioner has completed 240 days in each calendar year. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no.1 to 24 in para no. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A. Petitioner has also examined one Shri Hardev

Singh PW2, tendered/proved his affidavit Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of letter dated 18-1-2000 Ex. RW1/D and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-9-2017 for determination which are as under:—

- (1) Whether termination of services of petitioner by the respondent during June 1988 is/was improper and unjustified as alleged? ..*OPP*.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B petitioner is shown to have worked in 1986 petitioner had worked in the months of April, June, August & October for 94 ½ days, in 1987 in the months of February to May & July to September for 119 days and in February, May & June 1988 for 76 days when petitioner was disengaged. As such, from mandays chart as stated-above, no inference of petitioner to have worked for 240 days immediately preceding 12 calendar months from termination could be drawn. PW1 Ramesh Chand, the petitioner stepped into witness box has deposed on oath has maintained in claim petition. In cross-examination he has admitted facts qua HPPWD Division Jassur existed in 1994 which was consequently made HPPWD Jawali in the year 1994 *vide* Govt. Notification no. PBW-(A) A (1) 17/94 dated 21-7-1994 in his affidavit Ex. PW1/A. Be it stated that, petitioner has claimed to have worked from 1986 to June 1990 but the mandays chart on record does not support his statement. PW2 Shri Hardev Singh s/o Sh. Harnam

Singh, VPO Suliali, Tehsil Nurpur, District Kangra, H.P. has fully supported case of petitioner but being an interested witness has deposed contrary to documentary evidence *i.e.* mandays chart on record who cannot be believed for petitioner having worked from 1987 to 1990 as per mandays chart petitioner had not worked after March 1987 moreso when petitioner had not worked under Suliali Sub-Division or Nurpur Division. As such, testimony of PW2 cannot be believed and relied qua plea of petitioner. RW1 Jagtar Singh has denied this fact who clarified that according to their record petitioner had merely worked for 290 days as reflected in mandays chart otherwise, in either situation petitioner had not worked for 240 days and thus it cannot be held that petitioner had factually worked for 240 days immediately prior to his termination in the month of June 1988 and for said reason respondent was not required to have resorted to procedure envisaged under Section 25-F of the Act. In so far as, plea of abandonment is concerned, same is to be proved like another fact in issue. Mere allegation of respondent that petitioner abandoned the job is not sufficient which was to be proved like any another fact in issue establishing that respondent issued notice calling upon petitioner to join duty which he did not do so and even did not depose that petitioner had abandoned the job. As such, plea of abandonment of job of petitioner raised by respondent merit rejection. It is admittedly not the case of respondent that any notice has been issued prior to termination or disengagement or any compensation was paid in lieu thereof. For aforesaid reasons judgment titled as **State of Himachal Pradesh & another vs. Partap Singh** reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286** relied by ld. counsel for petitioner is not attracted in this case. Accordingly, it is held that respondent has not violated Section 25-F (a) (b) (c) of the Act.

12. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under Section 25-G of the Act was not followed. In absence of seniority list, it could not be stated as who were the junior working at the time of petitioner under Jawali Division or prior to it under Jassur Division who had been retained and petitioner has been terminated. In so far as allegation of petitioner as contained in para no.8 of affidavit is concerned that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and 24 others who joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen had been retained and petitioner was illegally terminated.

13. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division on request and she was posted as Sub-Division Suliali under HPPWD Nurpur Division. As such, Smt. Kusum Lata had at no point of time had worked under Jassur Division. Similarly, 24 persons joined as mentioned in para no.8 of affidavit in Division Nurpur had not been engaged either in Division Jassur of HPPWD which has since been renamed at Jawali HPPWD Division. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service by respondent arbitrarily in violation of provisions of Section 25-G of the Act since petitioner has failed to establish retention of any junior or engagement of junior by respondent at all who was not under any obligation to issue notice under Section 25-G of the Act and similarly under 25-H to the petitioner for reemployment while engaging any junior. Be it stated that RW1 has denied material facts qua engagement of Kusum Lata and 24 others as mentioned in para no.8 of claim petition as well as affidavit of petitioner Ex. PW1/A which established that workers engaged did not work under Jassur HPPWD Division which has now been renamed as Jawali HPPWD Division. Accordingly, respondent is held to have not violated Sections 25-G and 25-H of the Act.

14. No other point was pressed or argued by ld. counsel for petitioner and Ld. Dy. D.A. representing respondent.

14-A. In view of foregoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in June 1988 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3:

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 4:

16. Ld. counsel for the petitioner has relied upon judgment titled as **Inder Singh vs. State of H.P. through Secretary & Ors.** reported in **2016 (Vol.1) Himachal Law Reporter (Fortnightly) 487**, in which Hon'ble High Court of H.P. has held that relief under the Act not be denied merely on ground of delay. Ld. Dy.D.A. for state has contended that there is long delay in this case unexplained. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Enough has been emphasized by ld. counsel for petitioner that some resolution had been sent to Registrar Hon^{ble} State Administrative Tribunal in the year 1992 due to which dispute could be raised earlier but as delay is approaching this court is not the criteria to deny relief sought for and even if it is accepted that some resolution had been sent in 1992, it shall have no bearing on merits of case. As such, even when resolution in question has not been replied, the same would not attract merit of this case in any manner. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

18. As a sequel to my findings on foregoing issues no.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 265/2016
Date of Institution : 03-05-2016
Date of Decision : 04-05-2018

Shri Rajinder Kumar s/o Shri Chhaju Ram, r/o Village and Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Rajinder Kumar s/o Shri Chhaju Ram, r/o Village and Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. during August 1987 by the Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P., who had worked as beldar on daily wages for 12 days during year 1987 and has raised his industrial dispute after about 24 years *vide* demand notice dated 23-7-2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 12 days during year 1987 and delay of about 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of "Last come First go" was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June, 1990 with prayer for being reengaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply inter-alia taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW- (A) A (1)

17/94 dated 21-7-1994. It is stated that petitioner had worked intermittently *w.e.f.* August 1987 and left the work at his own sweet will however emphatically denied that petitioner has completed 240 days in each calendar year. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no.1 to 24 in para no. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A. Petitioner has also examined one Shri Hardev Singh PW2, tendered/proved his affidavit Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of letter dated 18-1-2000 Ex. RW1/D and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-9-2017 for determination which are as under:—

- (1) Whether termination of services of petitioner by the respondent during August 1987 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B petitioner is shown to have worked in 1986 petitioner had worked in the month of August for 12 days when petitioner was disengaged. As such, from mandays chart as stated-above, no inference of petitioner to have worked for 240 days immediately preceding 12 calendar months from termination could be drawn. PW1 Ramesh Chand, the petitioner stepped into witness box has deposed on oath has maintained in claim petition. In cross-examination he has admitted facts qua HPPWD Division Jassur existed in 1994 which was consequently made HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21.7.1994 in his affidavit Ex. PW1/A. Be it stated that, petitioner has claimed to have worked from 1986 to June, 1990 but the mandays chart on record does not support his statement. PW2 Shri Hardev Singh s/o Sh. Harnam Singh, VPO Suliali, Tehsil Nurpur, District Kangra, H.P. has fully supported case of petitioner but being an interested witness has deposed contrary to documentary evidence *i.e.* mandays chart on record who cannot be believed for petitioner having worked from 1987 to 1990 as per mandays chart petitioner had not worked after August 1987 moreso when petitioner had not worked under Suliali Sub-Division or Nurpur Division. As such, testimony of PW2 cannot be believed and relied qua plea of petitioner. RW1 Jagtar Singh has denied this fact who clarified that according to their record petitioner had merely worked for 12 days as reflected in mandays chart otherwise, in either situation petitioner had not worked for 240 days and thus it cannot be held that petitioner had factually worked for 240 days immediately prior to his termination in the month of August 1987 and for said reason respondent was not required to have resorted to procedure envisaged under Section 25-F of the Act. In so far as, plea of abandonment is concerned, same is to be proved like another fact in issue. Mere allegation of respondent that petitioner abandoned the job is not sufficient which was to be proved like any another fact in issue establishing that respondent issued notice calling upon petitioner to join duty which he did not do so and even did not depose that petitioner had abandoned the job. As such, plea of abandonment of job of petitioner raised by respondent merit rejection. It is admittedly not the case of respondent that any notice has been issued prior to termination or disengagement or any compensation was paid in lieu thereof. For aforesaid reasons judgment titled as **State of Himachal Pradesh & another vs. Partap Singh** reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286** relied by Id. counsel for petitioner is not attracted in this case. Accordingly, it is held that respondent has not violated Section 25-F (a) (b) (c) of the Act.

12. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under Section 25-G of the Act was not followed. In absence of seniority list, it could not be stated as who were the junior working at the time of petitioner under Jawali Division or prior to it under Jassur Division who had been retained and petitioner has been terminated. In so far as allegation of petitioner as contained in para no.8 of affidavit is concerned that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and 24 others who joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen had been retained and petitioner was illegally terminated.

13. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division on request and she was posted as Sub-Division Suliali under HPPWD Nurpur Division. As such, Smt. Kusum Lata had at no point of time had worked under Jassur Division. Similarly, 24 persons joined as mentioned in para no.8 of affidavit in Division Nurpur had not been

engaged either in Division Jassur of HPPWD which has since been renamed at Jawali HPPWD Division. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service by respondent arbitrarily in violation of provisions of Section 25-G of the Act since petitioner has failed to establish retention of any junior or engagement of junior by respondent at all who was not under any obligation to issue notice under Section 25-G of the Act and similarly under 25-H to the petitioner for reemployment while engaging any junior. Be it stated that RW1 has denied material facts qua engagement of Kusum Lata and 24 others as mentioned in para no.8 of claim petition as well as affidavit of petitioner Ex. PW1/A which established that workers engaged did not work under Jassur HPPWD Division which has now been renamed as Jawali HPPWD Division. Accordingly, respondent is held to have not violated Sections 25-G and 25-H of the Act.

14. No other point was pressed or argued by ld. counsel for petitioner and Ld. Dy. D.A. representing respondent.

14-A. In view of foregoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in August 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3:

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 4:

16. Ld. counsel for the petitioner has relied upon judgment titled as **Inder Singh vs. State of H.P. through Secretary & Ors.** reported in **2016 (Vol.1) Himachal Law Reporter (Fortnightly) 487**, in which Hon'ble High Court of H.P. has held that relief under the Act not be denied merely on ground of delay. Ld. Dy.D.A. for state has contended that there is long delay in this case unexplained. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The

Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors**, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another** (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Enough has been emphasized by ld. counsel for petitioner that some resolution had been sent to Registrar Hon'ble State Administrative Tribunal in the year 1992 due to which dispute could be raised earlier but as delay is approaching this court is not the criteria to deny relief sought for and even if it is accepted that some resolution had been sent in 1992, it shall have no bearing on merits of case. As such, even when resolution in question has not been replied, the same would not attract merit of this case in any manner. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

18. As a sequel to my findings on foregoing issues no.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 264/2016
Date of Institution : 03-05-2016
Date of Decision : 04-05-2018

Shri Roop Lal s/o Shri Karam Chand, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Roop Lal s/o Shri Karam Chand, r/o Village and Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. during April 1990 by the Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated 23-07-2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed HPPWD Jawali Division on which various construction sites such as Bodh to Chaki Dhar Road, Suliali to Dev Bharari and several others had been carried out but petitioner had been disengaged in the month of June 1990. It further transpires from the claim petition that petitioner had completed 240 days in each calendar year and his disengagement was illegal and unjustified. It is alleged that Jassur HPPWD Division has been renamed as HPPWD Division Jawali where more than 1000 workers had been engaged for several years and that Division was involved in construction and maintenance of roads, building, bridge and repair and maintenance of tool and plants etc. It is alleged that HPPWD throughout the year has been continuing with work aforesaid but despite availability of funds and work, service of petitioner had been illegally terminated. It is also alleged that Executive Engineer, HPPWD Jassur now shifted to HPPWD Division Jawali under mistaken notion had terminated service of petitioner in the month of June 1990 and thereafter petitioner had neither been gainfully employed nor has his own source of income. It is alleged that after oral termination of service of petitioner, he made several verbal requests to HPPWD Division Nurpur as well as Sub-Division Jawali when he was assured to be engaged in future but no action was taken due to which a resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar to Hon'ble Administrative Tribunal Shimla which has not been decided till date. Averments made in the claim petition further revealed that petitioner and similarly situated persons worked on daily wages basis and HPPWD constituted one unit besides principle of "Last come First go" had been violated. It is further revealed from claim petition that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District

Kangra, H.P. had been retained by Engineer-in-Chief who is now working under HPPWD Sub-Division Nurpur besides 24 similarly situated junior were reemployed by Engineer-in-Chief, Shimla in the year 2010 in pursuance to direction of Hon'ble High Court of H.P. in CWP No.2106 to 2129/2010 whereby respondents had been directed to implement award dated 22-12-2007 passed by this court. The grievance of the petitioner further remains that while terminating service of petitioner, respondent did not follow mandate of Section 25-F (a) 25 (b) & 25 (c) of the Industrial Disputes Act, 1947 (hereinafter called "Act" for brevity) as neither notice nor retrenchment compensation or reason for terminating service had been given. As such, alleging that respondent to have violated Section 25-G of Industrial Disputes Act as juniors had been retained whereas the petitioner had been disengaged and at the same time while reengaging juniors and several other workers, notice for reemployment was not issued to petitioner calling upon him to join and for said reason there is violation of Section 25-H of the Industrial Disputes Act. The cause of action arose to petitioner in 1990 and thereafter in 1992 when resolution on behalf of retrenched workers including petitioner had been sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla which has remained un-replied till date and thereafter in 2010, 24 similarly situated workers had been appointed in pursuance to order of Hon'ble High Court of H.P. Thereafter cause of action also remained when petitioner visited HPPWD Nurpur and thereafter HPPWD Jawali (Nurpur) which has since been shifted to HPPWD Jawali when respondent totally refused to appoint petitioner and thereafter when petitioner filed notice/application under Section 2K of Industrial Disputes Act in the office of Labour Office Dharamshala which had been decided in the month of March 2016. Accordingly, petitioner prays for quashing of verbal order of disengagement of petitioner in June 1990 with continuity in service, seniority and all other consequential service benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged in 1986 rather petitioner had been engaged in February 1988 who continued to work till June 1990. Admitted that Jassur Division has been shifted with renamed as HPPWD Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It is claimed that petitioner had worked with respondent from February 1988 to April 1990 intermittently and thereafter left the work at his own sweet will. It has been emphatically denied that petitioner had worked for 240 days in each calendar year instead petitioner had never completed 240 days in any of the years when he worked with the respondent. Asserted that petitioner had abandoned the job as he himself did not come to report for duty after April 1990 besides denied petitioner had approached the department for his reengagement. In so far as engagement of Smt. Kusum Lata and workers mentioned at serial no.1 to 24 are concerned, it is alleged that these workers had never worked with the respondent rather these workers had been engaged by Executive Engineer, HPPWD Nurpur on direction of the Hon'ble High Court of H.P. It is specifically stated that prior to demand notice issued by petitioner in 2011 he never approached the department for reengagement. It has been denied that respondent had adopted pick and choose policy while disengaging petitioner. It is also stated that only those workers had been regularized by the respondent who worked continuously and fulfilled the criteria of regularization as per government policy. Denying that cause of action had accrued to petitioner in the year 1990 as petitioner did not work after April 1990 and petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A. Petitioner has also examined one Shri Hardev Singh s/o Harnam Singh, VPO, Suliali, Tehsil Nurpur, District Kangra, as PW2, tendered/proved his affidavit Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex.

RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of letter dated 18-1-2000 Ex. RW1/D and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-09-2017 for determination which are as under:—

- (1) Whether termination of services of petitioner by the respondent during April 1990 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Claim petition is partly allowed awarding lump-sum compensation of Rs. 30,000/- per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B, petitioner is shown to have worked from February 1988 to April 1990 and had worked for period of 244 days in preceding 12 months immediately before termination. PW1 has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in claim petition besides he asserted to have worked from 1986 to June 1990 but the documentary evidence produced by the respondent as stated above clearly established that petitioner did not work from 1986 rather he was engaged for the first time in the month of February 1988 when he worked for 25 days. PW2 Shri Hardev Singh s/o Sh. Harnam Singh, VPO Suliali, Tehsil Nurpur, District Kangra, H.P. has fully supported case of petitioner but being an interested witness deposing contrary to documentary evidence on record cannot be believed for petitioner having worked from 1986 instead he worked from year 1988. No documentary evidence has been produced by petitioner which would show that petitioner had worked from 1986 to June 1990. On the other hand, RW1 Shri Jagtar Singh, Executive Engineer, HPPWD Jawali has specifically stated in cross-examination that petitioner had worked as shown in the mandays chart aforesaid which has also been relied upon by the respondent while leading evidence. In cross-examination, RW1 admitted that from 1986 to 1990 Bodh to Chakki Dhar road was under construction but this fact does not support

petitioner's claim qua having been engaged in 1986 and at the same time, version of PW2 that petitioner having worked from 1986 to 1990 could not be believed as PW2 has revealed in cross-examination that this witness had retired in the year 2004 from HPPWD Sub-Division Suliali who worked as work inspector. Since this witness has admitted that he had worked at Suliali Sub-Division and that for the first time petitioner had worked with this witness under Jassur Division which has since been made as Nurpur Division. This witness has further admitted to be resident of same village that of the petitioner. As such, he appears to be an interested witness to depose in favour of petitioner and factually this witness also never worked with the petitioner from 1988 to 1990 rather period of 1986 to 1988 which is under dispute has to be decided on the basis of mandays chart Ex. RW1/B.

12. The grievance of petitioner further remains that respondent had no recourse to provisions of Section 25-F of the Act which required issuance of notice and payment of compensation in lieu of notice period besides reason for disengagement under Section 25-F (a) (b) and (c) of the Act. As has come in the evidence, petitioner had worked for more than 240 days prior to his termination, it was required for respondent to have issued notice before terminating service of petitioner which has not been done in this case. Be it stated that RW1 has admitted that no notice had been issued by him calling upon petitioner to resume duty. In so far as, plea of abandonment is concerned, same has to be proved like another fact in issue. It is admittedly not the case of respondent that any notice has been issued or compensation was paid in lieu thereof and as such this court has left with no option but to hold that respondent had violated provisions of Section 25-F of the Industrial Disputes Act.

13. In so far as provisions of Section 25-G of Industrial Disputes Act is concerned, suffice would be to state here that petitioner had not produced seniority list by which it could be established that persons junior to petitioner have been engaged and that he had been arbitrarily disengaged from service. In so far as implementation of order of Hon'ble High Court is concerned, it would not mean that juniors were engaged rather those workers at serial no.1 to 24 were engaged who were although junior to petitioner but it was order of court and not the act of the respondent in engaging the juniors. Smt. Kusum Lata has never worked under Jassur Division as is evident from reply filed by the respondent. There is no documentary evidence on record which would show that Smt. Kusum Lata ever remained engaged under Jassur Division rather she was transferred from Dalhousie on request to Suliali but factually she was initially appointed in 1983 who cannot be stated to be junior to petitioner. Besides, none of the workers as mentioned in the claim petition have worked in Jassur Division rather from documentary evidence on record, it is abundantly clear that in the year 1994 Jassur Division was renamed as Jawali Division as is evident from Ex. RW1/C. Thus, none of the workers as mentioned in claim petition can be stated to be junior to petitioner who were factually engaged in Nurpur Division and thus these workers being of different Division in no manner infringed rights of petitioner moreover no seniority list has been produced by the petitioner. In view of foregoing, respondent had not violated provisions of Section 25-G and 25-H of the Industrial Disputes Act.

14. Ld. counsel for petitioner has contended that after petitioner's termination in June 1990, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Id. Authorized Representative of petitioner, Id. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked as a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as working as daily wage privately after his disengagement. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R.

Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed even after his disengagement. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched by respondent without complying Section 25-F of Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed after his termination and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

15. Lastly, Id. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay of more than 20 years which disentitles petitioner relief claimed by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka** [4] it was held by this Court as follows:—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In *Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)* 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh I. The Sirhind Co-Operative Marketing-cum-Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part

of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

16. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in 1990 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

17. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I. D. Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Id. counsel as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 485 days as per mandays chart on record and that the services of petitioner were disengaged in 1990 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **twenty years i.e.** demand notice was given on 23-7-2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 49 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. Id. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

18. In view of foregoing discussion, a lump-sum compensation of Rs. 30,000/- (Rupees thirty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner

would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3:

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

20. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 311/2016
Date of Institution : 12-05-2016
Date of Decision : 04-05-2018

Shri Som Raj s/o Shri Gian Chand, r/o Village Ghattla, P.O. Khawara, Tehsil Nurpur,
District Kangra, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
 For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Som Raj s/o Shri Gian Chand, r/o Village Ghattla, P.O. Khawara, Tehsil Nurpur, District Kangra, H.P. during February 1990 by the Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P., who had worked as beldar on daily wages for 18 ½ days during year 1990 and has raised his industrial dispute after more than 21 years *vide* demand notice dated 23-7-2011, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 18 ½ days during year 1990 and delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of 'Last come First go' was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June 1990 with prayer for being reengaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification no. PBW- (A) A (1) 17/94 dated 21-7-1994. It is stated that petitioner had worked intermittently *w.e.f.* November 1987 till March 1987 and left the work at his own sweet will however emphatically denied that petitioner has completed 240 days in each calendar year. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no.1 to 24 in para no. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of letter dated 18-1-2000 Ex. RW1/D and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 08-11-2017 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondent during Feb. 1990 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on ground of delay and laches as alleged? ..*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B petitioner is shown to have worked in the month of February 1990 for a period of 18 ½ days, in 1989 in the month of December for 29 days and in July 1987 petitioner had worked for 27 days. As such, from mandays chart as aforesaid above, no inference of petitioner to have worked for 240 days immediately preceding 12 calendar months from termination could be drawn. PW1 Som Raj, the petitioner has stepped into witness box has deposed on oath as maintained in claim petition. In cross-examination, he has admitted facts qua HPPWD Division Jassur existed in 1994 and thereafter HPPWD Jawali was made in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. In his affidavit Ex. PW1/A, petitioner has claimed to have worked from 1986 to June 1990 but the mandays chart on record does not support his statement. RW1 Jagtar Singh, Executive Engineer, HPPWD, Jawali has denied this fact who clarified that according to their record petitioner had merely worked for 18 ½ days but testimony of RW1 does appear to be correct as the mandays chart shows contrarily petitioner having worked in June 1987 for 27 days and 24 days in December 1987. Otherwise also, in either situation, petitioner had not worked for 240 days. As such, uncorroborated testimony of petitioner could not be relied so as to hold that petitioner had factually worked for 240 days immediately prior to his termination in June 1990 and in that situation, it was not necessary for respondent to have resorted to procedure envisaged under Section 25-F of the Act. In so far as, plea of abandonment is concerned, same is to be proved like another fact in issue. Mere allegation of respondent that petitioner abandoned the job is not sufficient which was to be proved like any another fact in issue establishing that respondent issued notice calling upon petitioner to join duty which he did not do so and even did not depose that petitioner had abandoned the job. As such, plea of abandonment of job of petitioner raised by respondent merit rejection. It is admittedly not the case of respondent that any notice has been issued prior to termination or disengagement or any compensation was paid in lieu thereof. Accordingly, it is held that respondent not violated Section 25-F of the Act.

12. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under Section 25-G of the Act was not followed. In absence of seniority list, it could not be stated as to who were the juniors working at the time of petitioner under Jawali Division or prior to it under Jassur Division who had been retained and petitioner has been terminated. In so far as allegation of petitioner contained in para no.8 of affidavit is concerned, Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 but 24 others who joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen had been retained and petitioner was illegally terminated. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division on request and was posted at Sub-Division Suliali under Nurpur Division. As such, Smt. Kusum Lata had at no point of time had worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para no. 8 of affidavit in Division Nurpur who neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act since petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under Section 25-F of the Act to the petitioner for reemployment. Be it stated that respondent in reply as well as on

oath RW1 has denied material facts qua engagement of Kusum Lata and 24 others as mentioned in para no.8 of claim petition. As such, respondent is held to have neither violated Sections 25-G nor 25-H of the Act.

13. In so far as instead in reply filed by respondent, it has been categorically denied that Smt. Kusum Lata and 24 others had ever worked with Jassur Division. In so far as judgment titled as **State of Himachal Pradesh & another vs. Partap Singh** reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286**, the same is not applicable in this case as petitioner has failed to establish that respondent had violated Section 25-G & 25-H of the Act. No other point was pressed or argued by ld. counsel for petitioner and ld. Dy. D.A. representing respondent. No other point was pressed or argued by ld. counsel for petitioner and ld. Dy. D.A. representing respondent.

14. In view of foregoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in March 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3:

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 4:

16. Ld. counsel for the petitioner has relied upon judgment titled as **Inder Singh vs. State of H.P. through Secretary & Ors.** reported in **2016 (Vol.1) Himachal Law Reporter (Fortnightly) 487**, in which Hon'ble High Court of H.P. has held that relief under the Act not be denied merely on ground of delay. Ld. Dy.D.A. for state has contended that there is long delay in this case unexplained. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of

limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. Enough has been emphasized by Id. counsel for the petitioner that resolution had been sent by retrenched workmen to Registrar Hon'ble H.P. Administrative Tribunal in the year 1992 which has not been decided and nothing has been intimated to petitioner. Id. Dy. D.A. on the other hand has argued that even if resolution so sent in 1992 as claimed had been sent by petitioner the same shall have no significance does not affect merits of case. Since petitioner has failed to establish violation of Section 25-F, 25-G and 25-H of the Act. Moreover, in view of settled provision of law that claim of petitioner cannot be defeated merely on ground of delay as has been discussed in foregoing paras.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

19. As a sequel to my findings on foregoing issues no.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 180/2016
Date of Institution : 26-03-2016
Date of Decision : 04-05-2018

Shri Babu Ram s/o Shri Dhiano Ram, r/o Village Lakhwal, P.O. Sandwan, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Babu Ram s/o Sh. Dhiano Ram, r/o Village Lakhwal, P.O. Sandwan, Tehsil Nurpur, Distt. Kangra, H.P. from 8/11987 by the the Executive Engineer, HPPWD, Division Jawali, Tehsil Jawali, Distt. Kangra, H.P. who had worked as beldar on daily wages basis only for 28 days and 165 days during the year 1986 and 1987 and has raised his Industrial dispute vide demand notice dated 7-8-2013 after more than 25 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more 25 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above exworker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of 'Last come First go' was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the

Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June 1990 with prayer for being reengaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW- (A) A (1) 17/94 dated 21-7-1994. It is stated that petitioner had worked intermittently *w.e.f.* December 1986 till August, 1987 and left the work at his own sweet will however emphatically denied that petitioner has completed 240 days in each calendar year. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no.1 to 24 in para no. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of letter dated 18-1-2000 Ex. RW1/D and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 09-10-2017 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondent during August, 1987 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B petitioner is shown to have worked in the month of December 1986 for a period of 28 days and 165 days in 1987. As such, from mandays chart as aforesaid above, no inference of petitioner to have worked for 240 days immediately preceding 12 calendar months from termination could be drawn. PW1 Babu Ram, the petitioner has stepped into witness box has deposed on oath as maintained in claim petition. In cross-examination, he has admitted facts qua HPPWD Division Jassur existed in 1994 and thereafter HPPWD Jawali was made in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. In his affidavit Ex. PW1/A, petitioner has claimed to have worked from 1986 to June 1990 but the mandays chart on record does not support his statement. RW1 Jagtar Singh, Executive Engineer, HPPWD, Jawali has denied this fact who clarified that according to their record petitioner had merely worked for 193 days. Otherwise also, in either situation, petitioner had not worked for 240 days. As such, uncorroborated testimony of petitioner could not be relied so as to hold that petitioner had factually worked for 240 days immediately prior to his termination in August, 1987 and in that situation, it was not necessary for respondent to have resorted to procedure envisaged under Section 25-F of the Act. In so far as, plea of abandonment is concerned, same is to be proved like another fact in issue. Mere allegation of respondent that petitioner abandoned the job is not sufficient which was to be proved like any another fact in issue establishing that respondent issued notice calling upon petitioner to join duty which he did not do so and even did not depose that petitioner had abandoned the job. As such, plea of abandonment of job of petitioner raised by respondent merit rejection. It is admittedly not the case of respondent that any notice has been issued prior to termination or disengagement or any compensation was paid in lieu thereof. Accordingly, it is held that respondent not violated Section 25-F of the Act.

12. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under Section 25-G of the Act was not followed. In absence of seniority list, it could not be stated as to who were the juniors working at the time of petitioner under Jawali Division or prior to it under Jassur Division who had been retained and petitioner has been terminated. In so far as allegation of petitioner contained in para no. 8 of affidavit is concerned, Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 but 24 others who joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen had been retained and petitioner was illegally terminated. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division on request and was posted at Sub-Division Suliali under Nurgur Division. As such, Smt. Kusum Lata had at no point of time had worked under Jassur

Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para no. 8 of affidavit in Division Nurpur who neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act since petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under Section 25-F of the Act to the petitioner for reemployment. Be it stated that respondent in reply as well as on oath RW1 has denied material facts qua engagement of Kusum Lata and 24 others as mentioned in para no.8 of claim petition. As such, respondent is held to have neither violated Sections 25-G nor 25-H of the Act.

13. In so far as instead in reply filed by respondent, it has been categorically denied that Smt. Kusum Lata and 24 others had ever worked with Jassur Division. In so far as judgment titled as **State of Himachal Pradesh & another vs. Partap Singh** reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286**, the same is not applicable in this case as petitioner has failed to established that respondent had violated Section 25-G & 25-H of the Act. No other point was pressed or argued by ld. counsel for petitioner and ld. Dy. D.A. representing respondent. No other point was pressed or argued by ld. counsel for petitioner and ld. Dy. D.A. representing respondent.

14. In view of foregoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in August 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3:

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 4:

16. Ld. counsel for the petitioner has relied upon judgment titled as **Inder Singh vs. State of H.P. through Secretary & Ors.** reported in **2016 (Vol.1) Himachal Law Reporter (Fortnightly) 487**, in which Hon'ble High Court of H.P. has held that relief under the Act not be denied merely on ground of delay. Ld. Dy.D.A. for state has contended that there is long delay in this case unexplained. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,**

there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. Enough has been emphasized by ld. counsel for the petitioner that resolution had been sent by retrenched workmen to Registrar Hon'ble H.P. Administrative Tribunal in the year 1992 which has not been decided and nothing has been intimated to petitioner. Ld. Dy. D.A. on the other hand has argued that even if resolution so sent in 1992 as claimed had been sent by petitioner the same shall have no significance does not affect merits of case. Since petitioner has failed to establish violation of Section 25-F, 25-G and 25-H of the Act. Moreover, in view of settled provision of law that claim of petitioner cannot be defeated merely on ground of delay as has been discussed in foregoing paras.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

19. As a sequel to my findings on foregoing issues no.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 324/2016
Date of Institution : 26-05-2016
Date of Decision : 04-05-2018

Shri Karnail Singh s/o Shri Dhian Chand, r/o Village Niari, P.O. Gurchal, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Karnail Singh s/o Shri Dhian Chand, r/o Village Niari, P.O. Gurchal, Tehsil Nurpur, District Kangra, H.P. during July 1987 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked as beldar on daily wages for 94 days during year 1986, and 120 days during year 1987 respectively and has raised his industrial dispute after more than 24 years *vide* demand notice dated 23-7-2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 94 days during year 1986 and for 120 days during year 1987 respectively and delay of about 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla

which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of 'Last come First go' was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June 1990 with prayer for being reengaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in July 1987 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW- (A) A (1) 17/94 dated 21-7-1994. It is stated that petitioner had worked intermittently *w.e.f.* June 1986 till July 1987 and left the work at his own sweet will however emphatically denied that petitioner has completed 240 days in each calendar year. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no.1 to 24 in para no. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of letter dated 18-1-2000 Ex. RW1/D and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 26-8-2017 for determination which are as under:—

- (1) Whether the industrial dispute raised by petitioner vide demand notice dates 23-7-2011 qua his termination of service during July 1987 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.

- (2) Whether termination of services of the petitioner by the respondent during July 1987 is/was improper and unjustified as alleged? ..*OPP*.
- (3) If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	Discussed
Issue No. 2	:	No
Issue No. 3	:	Discussed
Issue No. 4	:	No
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B petitioner is shown to have worked in the year 1986 for a period of 94 days and in 1987 for 120 days. As such, from mandays chart as aforesaid above, no inference of petitioner to have worked for 240 days immediately preceding 12 calendar months from termination could be drawn. PW1 Karnail Singh, the petitioner has stepped into witness box has deposed on oath as maintained in claim petition. In cross-examination, he has admitted facts qua HPPWD Division Jassur existed in 1994 and thereafter HPPWD Jawali was made in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. In his affidavit Ex. PW1/A, petitioner has claimed to have worked from 1986 to June 1990 but the mandays chart on record does not support his statement. RW1 Jagtar Singh, Executive Engineer, HPPWD, Jawali has denied this fact who clarified that according to their record petitioner had merely worked for 218 days. Otherwise also, in either situation, petitioner had not worked for 240 days. As such, uncorroborated testimony of petitioner could not be relied so as to hold that petitioner had factually worked for 240 days immediately prior to his termination in July 1987 and in that situation, it was not necessary for respondent to have resorted to procedure envisaged under Section 25-F of the Act. In so far as, plea of abandonment is concerned, same is to be proved like another fact in issue. Mere allegation of respondent that petitioner abandoned the job is not sufficient which was to be proved like any another fact in issue establishing that respondent issued notice calling upon petitioner to join duty which he did not do so and even did not depose that petitioner had abandoned the job. As such, plea of abandonment of job of petitioner raised by respondent merit rejection. It is admittedly not the case of respondent that any notice has been issued prior to termination or disengagement or any compensation was paid in lieu thereof. Accordingly, it is held that respondent not violated Section 25-F of the Act.

12. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under Section 25-G of the Act was not followed. In absence of seniority list, it could not be stated as to who were the juniors working at the time of petitioner under Jawali Division or prior

to it under Jassur Division who had been retained and petitioner has been terminated. In so far as allegation of petitioner contained in para no. 8 of affidavit is concerned, Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 but 24 others who joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen had been retained and petitioner was illegally terminated. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division on request and was posted at Sub-Division Suliali under Nurpur Division. As such, Smt. Kusum Lata had at no point of time had worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para no. 8 of affidavit in Division Nurpur who neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act since petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under Section 25-F of the Act to the petitioner for reemployment. Be it stated that respondent in reply as well as on oath RW1 has denied material facts qua engagement of Kusum Lata and 24 others as mentioned in para no.8 of claim petition. As such, respondent is held to have neither violated Sections 25-G nor 25-H of the Act.

13. In so far as instead in reply filed by respondent, it has been categorically denied that Smt. Kusum Lata and 24 others had ever worked with Jassur Division. In so far as judgment titled as **State of Himachal Pradesh & another vs. Partap Singh** reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286**, the same is not applicable in this case as petitioner has failed to establish that respondent had violated Section 25-G & 25-H of the Act. No other point was pressed or argued by ld. counsel for petitioner and ld. Dy. D.A. representing respondent. No other point was pressed or argued by ld. counsel for petitioner and ld. Dy. D.A. representing respondent.

14. In view of foregoing discussions, issue no. 2 is decided in negative holding that termination of service of petitioner by the respondent in July 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Issues no. 2 and 3 are answered in negative in favour of respondent and against the petitioner.

Issue No. 3:

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 1:

16. Ld. counsel for the petitioner has relied upon judgment titled as **Inder Singh vs. State of H.P. through Secretary & Ors.** reported in **2016 (Vol.1) Himachal Law Reporter (Fortnightly) 487**, in which Hon'ble High Court of H.P. has held that relief under the Act not be denied merely on ground of delay. Ld. Dy.D.A. for state has contended that there is long delay in this case unexplained. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own

Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. Enough has been emphasized by ld. counsel for the petitioner that resolution had been sent by retrenched workmen to Registrar Hon'ble H.P. Administrative Tribunal in the year 1992 which has not been decided and nothing has been intimated to petitioner. Ld. Dy. D.A. on the other hand has argued that even if resolution so sent in 1992 as claimed had been sent by petitioner the same shall have no significance does not affect merits of case. Since petitioner has failed to establish violation of Section 25-F, 25-G and 25-H of the Act. Moreover, in view of settled provision of law that claim of petitioner cannot be defeated merely on ground of delay as has been discussed in foregoing paras.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

19. As a sequel to my findings on foregoing issues no. 2 and 3, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 378/2016
Date of Institution : 01-06-2016
Date of Decision : 04-05-2018

Shri Chamaru Ram s/o Shri Beli Ram, r/o Village Lakhwal, P.O. Sadwan, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Chamaru Ram s/o Shri Beli Ram, r/o Village Lakhwal, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. during 06/1990 by the Executive Engineer, H.P.P.W.D. Jawali Division, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute *vide* demand notice dated 07-08-2013 after lapse of 23 years. If not, keeping in view delay of more than 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner

had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of 'Last come First go' was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June 1990 with prayer for being reengaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW- (A) A (1) 17/94 dated 21-7-1994. It is denied that petitioner had worked with the respondent from 1986 to 1990 however contended that petitioner had never worked with the respondent and as such question of completion of 240 days did not arise. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no.1 to 24 in para no. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A. and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of Notification dated 21-7-1994 Ex. RW1/B, copy of letter dated 18-1-2000 Ex. RW1/C and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-9-2017 for determination which are as under:—

- (1) Whether termination of services of the petitioner by the respondent during December 1990 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on ground of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	Yes
Issue No. 4	:	Redundant
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that no mandays chart has been produced or proved by either party showing that petitioner had been factually engaged by respondent from May 1986 to June 1990. The plea of respondent as can be seen from reply on record show that petitioner was never engaged by respondent and therefore question of petitioner having completed 240 days and thereafter being retrenchment as claimed did not arise. As such, it was the petitioner who had to prove that he had worked under respondent for the period as alleged in claim petition and thereafter illegally terminated.

12. To prove his case petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The testimony of petitioner has not been corroborated by any co-worker who might have worked with him and as such uncorroborated testimony of petitioner cannot be relied as respondent has specifically denied relationship of petitioner being employee of respondent at any point of time. RW1 has repudiated claim of the petitioner in entirety although tendered Notification dated 21-7-1994 Ex. RW1/B and letter dated 18-8-1994 Ex. RW1/C. Cross-examination of RW1 reveals that according to record available in the office petitioner had neither been engaged nor worked under HPPWD Division Jassur and thereafter with HPPWD Division Jawali.

13. Ld. counsel for the petitioner has contended that since reference has been received from appropriate govt. it necessarily follows that some conciliation proceedings had taken place before Conciliation Officer followed by submission of failure report under Section 12(4) of the Act consequent upon which reference has been received which establishes existence of industrial

dispute *inter-se* parties. On the other hand, Id. Dy. D.A. for the State has contended that even in proceedings before the Conciliation Officer similar stand had been taken *i.e.* respondent having not been engaged petitioner at any point of time. In such like situation when petitioner alleged that conciliation proceedings which ended in failure report, the best evidence qua petitioner having been engaged could be proved producing reply filed by the respondent before Conciliation Officer which has not been done in this case. In absence of the same by withholding best evidence available with the petitioner, an adverse inference has been drawn against the petitioner's claim. Accordingly, when petitioner has failed to prove to have worked with the respondent, it was not necessary for the respondent to have resorted to procedure envisaged for retrenchment under Section 25-F of the Act *i.e.* issuance of one month notice or compensation in lieu thereof. As such, judgment of Hon'ble High Court of H.P. reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286** titled as **State of Himachal Pradesh & another vs. Partap Singh** relied upon by Id. counsel for petitioner is not attracted and for similar reasons, respondent is held to have not violated provisions of Sections 25-G and 25-H of the Act as petitioner failed to prove having been engaged by respondent as claimed.

14. In view of the foregoing discussions, petitioner is held not entitled to any relief as claimed by him. Accordingly, issue no.1 is answered in negative holding that respondent has not terminated service of petitioner in the month of June, 1990 & has thus not violated Section 25-F, 25-G and 25-H of the Act and for said reason, petitioner is not entitled for any consequential service benefits as claimed. Issue no.2 is thus answered in negative. In so far as issue no.3 qua maintainability of claim petition, suffice would be to state here that when petitioner had not been engaged by respondent at any point of time as discussed in foregoing paras, the petition so moved could not stated to be maintainable. This issue is answered in affirmative against the petitioner in favour of respondent. All the issues stated above are decided against petitioner and in favour of respondent.

Issue No. 4:

15. As has been discussed in foregoing paras that petitioner was not engaged by the respondent, the plea of claim petition being bad on account of delay and laches does not arise and for said reason judgment reported in **2016 (1) Himachal Law Reporter 487** titled as **Inder Singh vs. State of H.P.** relied upon by Id. counsel for the petitioner is not attracted. This issue is answered accordingly.

Relief

16. As a sequel to my findings on foregoing issues no.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 359/2016
Date of Institution : 27-05-2016
Date of Decision : 04-05-2018

Shri Krishan Kumar s/o Shri Jaisy Ram, r/o Village Lakhwal, P.O. Sadwan, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Krishan Kumar s/o Shri Jaisy Ram, r/o Village Lakhwal, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. during 06/1990 by the Executive Engineer, H.P.P.W.D. Jawali Division, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute *vide* demand notice dated 07-08-2013 after lapse of 23 years. If not, keeping in view delay of more than 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while

terminating service principle of 'Last come First go' was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June 1990 with prayer for being reengaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW- (A) A (1) 17/94 dated 21-7-1994. It is denied that petitioner had worked with the respondent from 1986 to 1990 however contended that petitioner had never worked with the respondent and as such question of completion of 240 days did not arise. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no.1 to 24 in para no. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of Notification dated 21-7-1994 Ex. RW1/B, copy of letter dated 18-1-2000 Ex. RW1/C and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-9-2017 for determination which are as under:—

- (1) Whether termination of services of the petitioner by the respondent during December 1990 is/was illegal and unjustified as alleged? ..OPP.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.

- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on ground of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	Yes
Issue No. 4	:	Redundant
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that no mandays chart has been produced or proved by either party showing that petitioner had been factually engaged by respondent from May 1986 to June 1990. The plea of respondent as can be seen from reply on record show that petitioner was never engaged by respondent and therefore question of petitioner having completed 240 days and thereafter being retrenchment as claimed did not arise. As such, it was the petitioner who had to prove that he had worked under respondent for the period as alleged in claim petition and thereafter illegally terminated.

12. To prove his case petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The testimony of petitioner has not been corroborated by any co-worker who might have worked with him and as such uncorroborated testimony of petitioner cannot be relied as respondent has specifically denied relationship of petitioner being employee of respondent at any point of time. RW1 has repudiated claim of the petitioner in entirety although tendered Notification dated 21-7-1994 Ex. RW1/B and letter dated 18-8-1994 Ex. RW1/C. Cross-examination of RW1 reveals that according to record available in the office petitioner had neither been engaged nor worked under HPPWD Division Jassur and thereafter with HPPWD Division Jawali.

13. Ld. counsel for the petitioner has contended that since reference has been received from appropriate govt. it necessarily follows that some conciliation proceedings had taken place before Conciliation Officer followed by submission of failure report under Section 12(4) of the Act consequent upon which reference has been received which establishes existence of industrial dispute *inter-se* parties. On the other hand, ld. Dy. D.A. for the State has contended that even in proceedings before the Conciliation Officer similar stand had been taken *i.e.* respondent having not been engaged petitioner at any point of time. In such like situation when petitioner alleged that conciliation proceedings which ended in failure report, the best evidence qua petitioner having been engaged could be proved producing reply filed by the respondent before Conciliation Officer which has not been done in this case. In absence of the same by withholding best evidence available with the petitioner, an adverse inference has been drawn against the petitioner's claim. Accordingly, when petitioner has failed to prove to have worked with the respondent, it was not necessary for the respondent to have resorted to procedure envisaged for retrenchment under Section 25-F of the

Act *i.e.* issuance of one month notice or compensation in lieu thereof. As such, judgment of Hon'ble High Court of H.P. reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286** titled as **State of Himachal Pradesh & another vs. Partap Singh** relied upon by Id. counsel for petitioner is not attracted and for similar reasons, respondent is held to have not violated provisions of Sections 25-G and 25-H of the Act as petitioner failed to prove having been engaged by respondent as claimed.

14. In view of the foregoing discussions, petitioner is held not entitled to any relief as claimed by him. Accordingly, issue no.1 is answered in negative holding that respondent has not terminated service of petitioner in the month of June 1990 & has thus not violated Section 25-F, 25-G and 25-H of the Act and for said reason, petitioner is not entitled for any consequential service benefits as claimed. Issue no. 2 is thus answered in negative. In so far as issue no. 3 qua maintainability of claim petition, suffice would be to state here that when petitioner had not been engaged by respondent at any point of time as discussed in foregoing paras, the petition so moved could not stated to be maintainable. This issue is answered in affirmative against the petitioner in favour of respondent. All the issues stated above are decided against petitioner and in favour of respondent.

Issue No. 4:

15. As has been discussed in foregoing paras that petitioner was not engaged by the respondent, the plea of claim petition being bad on account of delay and laches does not arise and for said reason judgment reported in **2016 (1) Himachal Law Reporter 487** titled as **Inder Singh vs. State of H.P.** relied upon by Id. counsel for the petitioner is not attracted. This issue is answered accordingly.

Relief:

16. As a sequel to my findings on foregoing issues no.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 361/2016
Date of Institution : 27-05-2016
Date of Decision : 04-05-2018

Shri Rupal Singh s/o Shri Sadhu Ram, r/o Village Lakhwal, P.O. Sadwan, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Rupal Singh, s/o Shri Sadhu Ram, r/o Village Lakhwal, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. during 06/1990 by the Executive Engineer, H.P.P.W.D. Jawali Division, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated 07-08-2013 after lapse of 23 years. If not, keeping in view delay of more than 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of 'Last come First go' was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had

adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June 1990 with prayer for being reengaged in service with past seniority till reengagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June 1990 and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW- (A) A (1) 17/94 dated 21-7-1994. It is denied that petitioner had worked with the respondent from 1986 to 1990 however contended that petitioner had never worked with the respondent and as such question of completion of 240 days did not arise. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial no.1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial no.1 to 24 in para no. 8 of the claim petition were engaged under Nupur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A. and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of Notification dated 21-7-1994 Ex. RW1/B, copy of letter dated 18-1-2000 Ex. RW1/C and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-9-2017 for determination which are as under:—

- (1) Whether termination of services of the petitioner by the respondent during December 1990 is/was illegal and unjustified as alleged? ..OPP.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on ground of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	Yes
Issue No. 4	:	Redundant
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that no mandays chart has been produced or proved by either party showing that petitioner had been factually engaged by respondent from May 1986 to June 1990. The plea of respondent as can be seen from reply on record show that petitioner was never engaged by respondent and therefore question of petitioner having completed 240 days and thereafter being retrenchment as claimed did not arise. As such, it was the petitioner who had to prove that he had worked under respondent for the period as alleged in claim petition and thereafter illegally terminated.

12. To prove his case petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The testimony of petitioner has not been corroborated by any co-worker who might have worked with him and as such uncorroborated testimony of petitioner cannot be relied as respondent has specifically denied relationship of petitioner being employee of respondent at any point of time. RW1 has repudiated claim of the petitioner in entirety although tendered Notification dated 21-7-1994 Ex. RW1/B and letter dated 18-8-1994 Ex. RW1/C. Cross-examination of RW1 reveals that according to record available in the office petitioner had neither been engaged nor worked under HPPWD Division Jassur and thereafter with HPPWD Division Jawali.

13. Ld. counsel for the petitioner has contended that since reference has been received from appropriate govt. it necessarily follows that some conciliation proceedings had taken place before Conciliation Officer followed by submission of failure report under Section 12(4) of the Act consequent upon which reference has been received which establishes existence of industrial dispute *inter-se* parties. On the other hand, Id. Dy. D.A. for the State has contended that even in proceedings before the Conciliation Officer similar stand had been taken *i.e.* respondent having not been engaged petitioner at any point of time. In such like situation when petitioner alleged that conciliation proceedings which ended in failure report, the best evidence qua petitioner having been engaged could be proved producing reply filed by the respondent before Conciliation Officer which has not been done in this case. In absence of the same by withholding best evidence available with the petitioner, an adverse inference has been drawn against the petitioner's claim. Accordingly, when petitioner has failed to prove to have worked with the respondent, it was not necessary for the respondent to have resorted to procedure envisaged for retrenchment under Section 25-F of the Act *i.e.* issuance of one month notice or compensation in lieu thereof. As such, judgment of Hon'ble High Court of H.P. reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286** titled as **State of Himachal Pradesh & another vs. Partap Singh** relied upon by Id. counsel for petitioner is not attracted and for similar reasons, respondent is held to have not violated provisions of Sections 25-G and 25-H of the Act as petitioner failed to prove having been engaged by respondent as claimed.

14. In view of the foregoing discussions, petitioner is held not entitled to any relief as claimed by him. Accordingly, issue no.1 is answered in negative holding that respondent has not terminated service of petitioner in the month of June 1990 & has thus not violated Section 25-F, 25-G and 25-H of the Act and for said reason, petitioner is not entitled for any consequential service benefits as claimed. Issue no. 2 is thus answered in negative. In so far as issue no. 3 qua maintainability of claim petition, suffice would be to state here that when petitioner had not been engaged by respondent at any point of time as discussed in foregoing paras, the petition so moved could not stated to be maintainable. This issue is answered in affirmative against the petitioner in favour of respondent. All the issues stated above are decided against petitioner and in favour of respondent.

Issue No. 4:

15. As has been discussed in foregoing paras that petitioner was not engaged by the respondent, the plea of claim petition being bad on account of delay and laches does not arise and for said reason judgment reported in **2016 (1) Himachal Law Reporter 487** titled as **Inder Singh vs. State of H.P.** relied upon by ld. counsel for the petitioner is not attracted. This issue is answered accordingly.

Relief:

16. As a sequel to my findings on foregoing issues no.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. 653/ 2016

Sh. Lekh Raj s/o Sh. Data Ram, r/o Village Una, Arya Nagar, Tehsil & Distt. Una, H.P.

..Petitioner.

Versus

The Executive Engineer, Flood Protection Division, I&PH Department Gagret, District Una, H.P.
..Respondent.

16-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.37 A.M. Be awaited and put up after lunch hours.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

16-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.37 P.M. None appearance of petitioner or his Id. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Leta copy of the Order/Award be sent to the appropriate

Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
16-05-2018

Sd/-
K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. 280/ 2015

H.P. Sh. Hem Raj s/o Sh. Sumeru, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba,
..Petitioner.

Versus

H.P. The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba,
..Respondent.

19-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

19-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced
19-05-2018:

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. 218/ 2016

Sh. Prem Raj s/o Sh. Budhi Ram, r/o Village Bisthow, P.O. Luj, Tehsil Pangi, Distt. Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *..Respondent.*

19-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

19-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

19-05-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 154/17

Sh. Tilak Raj s/o Shri Lal Chand, r/o Village Chumara, P.O. Sillagharat, Tehsil & District Chamba, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Division Chamba, District Chamba, H.P. *..Respondent.*

22-05-2018 Present : Petitioner in person.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Heard. At this stage, petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the petitioner as stated above, the reference no. 154/17 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:

22-05-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. 571/ 2016

Sh. Chaman Singh s/o Sh. Dharam Chand, r/o Village Kuthal, P.O. Sach, Tehsil Pangi,
District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar (Pangi), District Chamba, H.P.
...Respondent.

22-05-2018 Present : None for the petitioner.
 Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

22-05-2018 Present : None for the petitioner.
 Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
22-05-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 157/2015
Date of Institution : 11-04-2015
Date of Decision : 22-05-2018

Shri Roop Singh s/o Shri Amar Chand, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. ...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Roop Singh s/o Shri Amar Chand, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide demand notice dated 03-03-2012 regarding his alleged illegal termination of service during November 2005 suffers from delay and laches? If not, Whether termination of the service of Shri Roop Singh s/o Shri Amar Chand, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. during November 2005 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the month of May 1994 who continuously worked till November 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of November 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the year 2005 when the

service of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from November 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of November 2005. He further prayed for reinstatement in service in the year 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May 1994 to November 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied all the contentions of claim petition as raised by the petitioner. It is alleged that petitioner had never engaged by the respondent/department. Respondent prayed that the present petition is being devoid of any merit and as such petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 10-3-2016 Ex. PW1/B, copy of mandays chart of petitioner Ex. PW1/C, Ex. PW1/D to PW1/N copies of mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of workers Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17-5-2016 for determination which are as under:—

- (1) Whether industrial dispute raised by petitioner *vide* demand notice dated 3-3-2012 qua his termination of service during November 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP.*
- (2) Whether termination of the services of petitioner by the respondent during November 2005 is/was illegal and unjustified as alleged? ..*OPP.*

(3) If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.

(4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*. Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump-sum compensation of Rs. 30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. PW1/C coupled with pleadings of respondent that petitioner had worked from 1995 till 1999 whereas the claimant/petitioner alleges that he had worked from May 1994 to 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged *w.e.f.* 1995 to 1999 and not from 1994 to 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba district and remained engaged from 1994 to 2005. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless

service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. PW1/C any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. PW1/C would reveal that petitioner had worked for 25 days in the year 1995, 51 days in 1997, 16 days in 1998 and 106 days in 1999 and thus a total of his service from 1995 to 1999 in 04 years he had worked for 198 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. PW1/C that in the year 1999 the petitioner had merely worked for 106 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D, Ex. PW1/E, Ex. PW1/F are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1995 or thereafter whereas Ex. PW1/G to Ex. PW1/N are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/G the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that

petitioner was called upon to join for service at any time after 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1999 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service as reflected in Ex. RW1/B the year-wise mandays details of workers engaged in HPPWD Division Killar (Pangi). This document further showed that workmen from serial no.1 to 25 have been appointed on the basis of awards of labour court and serial no. 26 and 27 as harness case. Thus, plea that persons were directed to be appointed in pursuance to awards/orders were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these persons being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 3 years which entitled him for regularization of his service as per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in 1999, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked as a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled for full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Samanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay.

Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-cum-Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by

court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5 Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 198 days as per mandays chart on record and that the services of petitioner were disengaged in 1999 who worked as

non-skilled worker and had raised industrial dispute by issuance of demand notice after about **thirteen years** *i.e.* demand notice was given on 3-3-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 39 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. Id. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 30,000/- (Rupees thirty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

Issue No. 4:

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 129/2015
Date of Institution : 18-3-2015
Date of Decision : 22-05-2018

Smt. Dogi Devi w/o Shri Inder Sen, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Dogi Devi w/o Shri Inder Sen, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 26-06-2011 regarding her alleged illegal termination of service during October 2005 suffers from delay and latches? If not, whether termination of the services of Smt. Dogi Devi w/o Shri Inder Sen, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. during October 2005 by the Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages,

seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named revealed that petitioner had been initially engaged as daily waged beldar on muster-roll basis in the month of June 1994 who continuously worked till October 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition further revealed that the service of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named twenty seven persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October, 2005 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason, termination of the service of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner has claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of being heard had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October 2005 till the date of institution of present claim petition who was not gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October 2005. besides has prayed for reinstatement in service *w.e.f.* month of October 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 8 years of service per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the

respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition are concerned, they were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not at all required. Reiterating its stand respondent has maintained that petitioner had left the work at her own sweet will and the persons mentioned in para no.4 are stated to have been engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2005, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri V.K. Dhiman, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C, copy of orders/Awards Ex. RW1/D1 to Ex. RW1/D22 and closed the evidence. Thereafter petitioner moved an application for additional evidence so as to prove reply of respondent filing conciliation proceedings before Conciliation Officer in which prayer has been made to examine Labour Officer Chamba which was allowed.

7. In additional evidence petitioner had examined PW2 Raj Kumar Sharma, Labour-cum-Conciliation Officer Chamba had made statement on oath before this court that in relation to demand notice of petitioner in this case, the respondent/department had filed reply *vide* letter no. PW-KD-CB-EA-II-Dogi Devi/2011-8905-06 dated 22-12-2011 along-with mandays of petitioner. She had further stated that copy of letter dated 22-12-2011 has exhibited as Ex. PX and copy of mandays chart of petitioner (Dogi Devi) has been exhibited Ex. PY which were the same when department had filed reply. In cross-examination said Labour Officer had stated that she could not tell about the accuracy or correctness of records which had been produced by the department during conciliation. Respondent on the other hand did not lead any further rebutting to additional evidence.

8. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 07-7-2015 for determination which are as under:—

- (1) Whether termination of services of the petitioner by the respondent during the year October 2005 is/was improper and unjustified as alleged? ..OPP.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.

- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on account of delay and laches on part of petitioner as alleged. If so, its effect? ..OPR.

Relief.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Claim petition is partly allowed per operative part of award.

REASONS FOR FINDINGS

Issues Nos. 1, 2 and 4:

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1995 continuously having worked till October 2005 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority, past service benefits and compensation as claimed by her.

13. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit, she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba district and remained engaged from June 1994 to October 2005. she has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement in service with full back wages and all the other consequential service benefits. The petitioner has further stated on oath that respondent/department after terminating her services in October 2005 *vide* oral order had engaged several co-workers who were junior to petitioner and were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no charge-sheet was raised. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal as petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as

the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

14. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. PY any notice or letter was ever issued by respondent/department. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment raised against petitioner.

15. A bare glance on the mandays chart Ex. PY would reveal that petitioner had worked for 65 days in the year 1995, 56 days in 1996, 133 days in 1997, 152 days in 1998, 103.5 days in 1999, 129 days in 2000, 101 days in 2001, 141.5 days in 2002, 133 days in 2003, 106 days in 2004 and 28 days in 2005 and thus a total of her service in 1995 to 2005 in 11 years she had worked for 1148 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks as such, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. PY that in the year 2005 the petitioner had merely worked for 28 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

16. Stepping into witness box as PW1, petitioner has sworn her affidavit Ex. PW1/A wherein she has reiterated her stand as maintained in the claim petition. It has come in findings in para no.15 of this award that petitioner had worked for 28 days in the year 2005, the respondent had terminated service of petitioner illegally in October 2005. In the detailed cross-examination of the petitioner as PW1 by Id. Dy. D.A., it is revealed that petitioner had worked upto October 2005. The petitioner has specifically denied that she had abandoned the job of her own but certainly there is no iota of evidence on record suggesting that any notice was served upon the petitioner calling upon her to join duties. Moreover when respondent had removed the petitioner from service once and this Court has held that petitioner had not abandoned the job, respondent was required to issue notice prior to termination or must have paid retrenchment compensation envisaged under Section 25-F of the Act. Significantly, RW1 Shri V.K. Dhiman, Executive Engineer, HPPWD Killar in cross-examination has admitted that when petitioner allegedly abandoned the job, no correspondence was made with her and has also admitted that petitioner had not been given retrenchment compensation as per record available in the office. Therefore this Court is left with no

option but to hold that respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947.

17. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1995 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years *i.e.* more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October 2005 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

18. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble Administrative Tribunal, Shimla as reflected in Ex. RW1/D1 to Ex. RW1/D22. I have gone through judgments/orders which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/D1 to Ex. RW1/D22 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service as per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

19. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October 2005, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked as a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment**

would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed who would be not entitled for back wages for the period when she was out of job on being terminated by the respondent.

20. In so far as the plea of the claimant/petitioner that after her illegal termination by the respondent in October 2005, petitioner remained out of job who had no income as alleged in para 10 of affidavit Ex. PW1/A besides having not been gainfully employed anywhere in the government or private organization due to which she was entitled for full back wages from illegal termination with consequential benefits. Reference is made to cross-examination of the petitioner by Id. Dy. D.A. who has pointed out that petitioner has in unambiguous terms admitted that she had worked as daily wage labourer having cultivable land which establishes that petitioner had income from other source as well. Since claimant/petitioner had sufficient income from cultivable land and working as daily wage labourer as admitted by him, it cannot be stated that she had no income after her termination as projected by petitioner as per claim. As such, it is held that petitioner is not entitled for back wages as claimed by her to be reinstated in service respondent having violated Section 25-G and 25-H of Act besides petitioner would also be entitled for seniority and continuity in service from the date of demand notice dated 26-6-2011 in the circumstances of case. Id. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court reported in **2014 LLR 673** titled as **Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd.** in which Hon'ble Apex Court has held that if the applicant/workman was wrongfully terminated, **the burden of proving that she was gainfully employed lies on the employer and if burden of proof is not discharged, workman would be entitled for full back wages.** In the case in hand, petitioner has led positive evidence stipulating therein that she was not gainfully employed after her illegal termination and that she has remained unemployed but she herself has admitted in cross-examination that she was having cultivable land and worked as labourer and thus she cannot be stated to have not remained gainfully employed.

21. Id. counsel/Authorized representative for the petitioner vehemently argued that petitioner was illegally terminated in October 2005 without any notice or retrenchment compensation who approached the office of the Labour Officer, Mandi where sufficient time took place and the Labour Officer, Chamba had submitted her failure report in the year 2012 in pursuance to which Labour Commissioner had referred petitioner's reference to Labour Court-cum-Industrial Tribunal for adjudication on 7th March, 2015 and thereafter claim under Section 10 of Industrial Disputes Act was filed and has now reached at the stage of orders and thus sufficient explanation has been given for the delay moreso when the petitioner was unskilled labourer fell in the category of beldar and that matter was brought before Labour Officer, Chamba by issuing demand notice dated 26-6-2011. From October 2011 to 2015, the petitioner claims to have approached authorities who did not pay heed to her request. Be it stated at this stage that once

period of engagement has not been disputed in reply as well as in cross-examination delay is recouring to legal remedy available under the Act in satisfactorily explained.

22. Ld. Dy. D.A. representing respondent/department has pointed out that retrenchment of petitioner in this case took place on October 2005 and the industrial dispute was raised on 26-6-2011 about 5 ½ years from date of retrenchment. Repudiating the argument advanced by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in her evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, she was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches.

23. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is exists an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue of the respondent moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination in this case is whether reference made at such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have been taken into consideration. In paragraph 23 sub-para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly

correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manually work for respondent. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law. Ld. AR/counsel for the petitioner has contended that termination of petitioner has been made in violation of provisions of Industrial Disputes Act, 1947. The petitioner is liable to be reinstated in service with full back wages. On the other hand ld. Dy. D.A. has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which criteria to be taken into consideration by Labour Court in awarding compensation has been laid down. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

24. I have gone through the judgment relied upon by ld. Dy. D.A. for respondent and of the view that judgment in Geetam Singh's case of (2013) does not apply to the case in hand in which Hon'ble Apex Court has laid down guidelines and factors to be considered by the Labour Court in cases involving violation of Industrial Disputes Act. In the case in hand before this Court, petitioner had promptly approached unlike in **Geetam Singh's** case when dispute was raised after six years and Hon'ble Apex Court instead of reinstatement of claimant/petitioner had awarded compensation but in the case in hand, demand notice was given to respondent after about 4 years besides delay was satisfactorily explained by petitioner as PW1. Since the judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)** had different facts particularly on delay in giving demand notice by petitioner before Hon'ble Apex Court after six years and the same not apply in the case in hand. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement with other consequential benefits instead of lump-sum compensation. Issue no. 1 is decided in affirmative whereas issue no. 4 is decided in negative and issue no. 2 is decided as discussed and are answered accordingly.

Issue No. 3:

25. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright.

Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised. Issue is thus answered in negative in favour of petitioner and against the respondent.

Relief

26. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages** from date of demand notice 26-6-2011, leaving the parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT CHAMBA)

Ref. No. : 203/2015
Date of Institution : 04-5-2015
Date of Decision : 22-05-2018

Smt. Butti w/o Shri Man Dev, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba,
H.P. ..Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Butti w/o Shri Man Dev, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 18-08-2010 regarding her alleged illegal termination of service during May 1996 suffers from delay and latches? If not, whether termination of the services of Smt. Butti w/o Shri Man Dev, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. during May 1996 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. After the receipt of the abovestated reference, a corrigendum dated 16th February, 2017 was received from the appropriate government which reads as under:—

“In partial modification of this Department's Notification of even number dated 22-03-2015, the date of termination of workman Smt. Butti Devi w/o Shri Mandev *may be read as* “**September, 2004**” *instead of* “**May, 1996**”, which was inadvertently recorded in the said notification”.

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster-roll basis in the month of September 1995 who continuously worked till September 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged as statutory provision of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that petitioner had been given intermittent/artificial breaks by the respondent/department deliberately so that petitioner did not complete 160 days in a year and as such breaks are required to be counted as continuous services for the purpose of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who had never been charge-sheeted for any act of indiscipline or negligence on her conduct and even at the time of verbal termination, neither any charge-sheet had been served upon nor opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September 2004 till the date

of institution of present claim petition who had not at all gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Act and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of September 2004 besides petitioner has further prayed for reinstatement in service along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to September 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2004 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

5. Respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner had been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay compensation in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no. 4 are stated to have been engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately whereas she has approached authorities under the Act after about 10 years and as claim petition is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent rather she of her accord abandoned the job, question of issuance of notice or wages in lieu thereof did not arise. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied. It has been reiterated that respondent has violated Sections 25-F, 25-G and 25-H of the Act.

7. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of RTI information dated 31-12-2012 Ex. PW1/B, Ex. PW1/C to PW1/M mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

8. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 28-8-2015 and issue no.1 recasted and was framed on 7-03-2018 for determination which are as under:—

- (1) Whether termination of services of the petitioner by the respondent during September 2004 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches on part of petitioner as alleged. If so, its effect? ..*OPR.*

Relief.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Claim petition is partly allowed per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1995 and thereafter continuously worked till September 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had herself abandoned the job of her own and used to work intermittently as per her convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled to relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by her.

13. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba district and remained engaged from September 1995 to September, 2004 besides maintained on oath that no notice under Section 25-F of the Act was given to her by the respondent before terminating her service and at the same time, no compensation in lieu of notice period was paid to her and thus her termination was illegal and void entitling petitioner for reinstatement in service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September 2004 by

oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence who had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but while retrenching petitioner from service, no notice was given. Be it stated that petitioner has also explained reason for not approaching the authorities under Industrial Disputes Act and thereafter before this Tribunal who initially had moved before the Labour Officer Chamba raising demand notice consequent upon which a failure report was submitted however Labour Commissioner did not make reference for industrial dispute raised by petitioner. It is stated that thereafter petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed to Labour Commissioner for making reference to the Labour Court due to which delay had occurred which was satisfactorily explained.

14. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. PY any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to have left the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

15. A bare glance on the mandays chart Ex. PY establishes that petitioner had worked for 23 days in the year 1995, 46 days in 1996, 173 days in 1997, 164 days in 1998, 84 days in 1999, 106 days in 2000, 103 days in 2001, 79 days in 2002, 85 days in 2003 and 88 days in 2004 and thus a total of her service in 1996 to 2004 in 10 years she had worked for 1098 days in her entire service period. It is pertinent to mention here that petitioner is shown to have worked in the month of October 2004 as can be noticed from Ex. RW1/B relied by respondent whereas Ex. PY is the mandays chart of petitioner obtained under RTI Act which shows that petitioner has worked till September 2004. Thus, it seems that while preparing Ex. RW1/B petitioner is wrongly shown to have worked till October 2004 as RW1 in cross-examination has specifically admitted that mandays chart Ex. PY had been issued by his department. In such like situation, this court is left with no option but to hold that petitioner had remained engaged till September 2004 and in the said year had worked 88 days but not 30 days in October 2004 but worked for 30 days in September, 2004. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 months from termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks and as such, this court is to confine its findings only with regard to alleged illegal termination in September 2004. It is evident from mandays chart Ex. PY that in the year 2004 the petitioner had merely worked for 88 days and in year 2003 worked for 85 days thus it is not established from evidence if immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have

issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

16. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1995 or thereafter whereas Ex. PW1/E to Ex. PW1/M are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the yearwise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence on record establishing that petitioner was called upon to join service at any time after September 2004 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

17. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of this court. Thus, plea that persons were directed to be appointed in pursuance to awards/orders were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these persons being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service as per government policy, yet respondent is not absolved from its accountability under Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

18. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked as a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she has specifically admitted that she had agricultural land and was earning from agricultural land from she maintaining her livelihood. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from

her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched by respondent without compliance of Section 25-G and Section 25-H of the Act however petitioner remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

19. Ld. counsel/Authorized representative for the petitioner vehemently argued that petitioner was illegally terminated in September 2004 without any notice or retrenchment compensation who approached the office of the Labour Officer, Mandi where sufficient time took place and the Labour Officer, Chamba had submitted her failure report in the year 2011 in pursuance to which Labour Commissioner had referred petitioner's reference to Labour Court-cum-Industrial Tribunal for adjudication on 7th April, 2015 and thereafter claim under Section 10 of Industrial Disputes Act was filed and has now reached at the stage of orders and thus sufficient explanation has been given for the delay moreso when the petitioner was unskilled labourer fell in the category of beldar and that matter was brought before Labour Officer, Chamba by issuing demand notice dated 18-8-2010. From 2010 to 2015, the petitioner claims to have approached authorities who did not pay heed to her request. Be it stated at this stage that once period of engagement has not been disputed in reply as well as in cross-examination and delay is recouring to legal remedy available under the Act in satisfactorily explained.

20. Ld. Dy. D.A. representing respondent/department has pointed out that retrenchment of petitioner in this case took place on September 2004 and the industrial dispute was raised about six years from date of retrenchment. Repudiating the argument advanced by Ld. Dy. D.A., Ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in her evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, she was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches.

21. In so far as the plea of the claimant/petitioner that after her illegal termination by the respondent in September 2004, petitioner remained out of job who had no income as alleged in para 10 of affidavit Ex. PW1/A besides having not been gainfully employed anywhere in the government or private organization due to which she was entitled for full back wages from illegal termination with consequential benefits. Reference is made to cross-examination of the petitioner by Id. Dy. D.A. who has pointed out that petitioner has in unambiguous terms admitted that she had worked as daily wage labourer having cultivable land which establishes that petitioner had income from other source as well. Since claimant/petitioner had sufficient income from cultivable land and working as daily wage labourer as admitted by him, it cannot be stated that she had no income after her termination as projected by petitioner as per claim. As such, it is held that petitioner is not entitled for back wages as claimed by her to be reinstated in service respondent having violated Section 25-G and 25-H of Act besides petitioner would also be entitled for seniority and continuity in service from the date of demand notice dated 18-8-2010 in the circumstances of case. Id. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court reported in **2014 LLR 673** titled as **Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd.** in which Hon'ble Apex Court has held that if the applicant/workman was wrongfully terminated, **the burden of proving that she was gainfully employed lies on the employer and if burden of proof is not discharged, workman would be entitled for full back wages.** In the case in hand, petitioner has led positive evidence stipulating therein that she was not gainfully employed after her illegal termination and that she has remained unemployed but she herself has admitted in cross-examination that she was having cultivable land and worked as labourer and thus she cannot be stated to have not remained gainfully employed.

22. Id. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is exists an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue of the respondent moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination in this case is whether reference made at such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have been taken into consideration. In paragraph 23 sub-para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-

extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborate discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manually work for respondent. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law. Ld. AR/counsel for the petitioner has contended that termination of petitioner has been made in violation of provisions of Industrial Disputes Act, 1947. The petitioner is liable to be reinstated in service with full back wages. On the other hand Ld. Dy. D.A. has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which criteria to be taken into consideration by Labour Court in awarding compensation has been laid down. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

23. I have gone through the judgment relied upon by Ld. Dy. D.A. for respondent and of the view that judgment in **Geetam Singh's** case of (2013) does not apply to the case in hand in which Hon'ble Apex Court has laid down guidelines and factors to be considered by the Labour Court in cases involving violation of Industrial Disputes Act. In the case in hand before this Court, petitioner had promptly approached unlike in **Geetam Singh's** case (2013 *supra*) when dispute was raised after six years and Hon'ble Apex Court instead of reinstatement of claimant/petitioner had awarded compensation but in the case in hand, demand notice was given to respondent after about 6 years besides delay was satisfactorily explained by petitioner as PW1 and version on point of reasonable delay inspires confidence. Since the judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)** had different facts particularly on delay in giving demand notice by petitioner before Hon'ble Apex Court after six years and the same does not apply in the case in hand. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement with other consequential benefits instead of lump-sum compensation for the reason stated hereinabove. Issue no. 1 is decided in affirmative whereas issue no. 4 is decided in negative and issue no. 2 is decided as discussed and are answered accordingly.

Issue No. 3:

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised. Issue is thus answered in negative in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages** from date of demand notice dated 18-8-2010, leaving the parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. 174/ 2016

Sh. Amar Chand s/o Sh. Ram Nath, r/o Village Tatan, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *..Respondent.*

23-05-2018 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

23-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his Id. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

23-05-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. 240/ 2016

Sh. Surinder Kumar s/o Sh. Ram Nath, Village Takwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, I&PH. Division Pangi, Tehsil Pangi, District Chamba, H.P. *..Respondent.*

23-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

23-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:

23-05-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. 601/ 2016

Sh. Ashok Kumar s/o Sh. Amru Ram, r/o Village Chaula, P.O. Dradda, Tehsil & District
Chamba, H.P. *..Petitioner.*

Versus

The Deputy Director, Animal Husbandry, Chamba, District Chamba, H.P. *..Respondent.*

23-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.37 A.M. Be awaited and put up after lunch hours.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

23-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
23-05-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. 35/ 2017

Sh. Sanjay Kumar s/o Sh. Parkash Chand, r/o Village Badehar, P.O. Patti, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Vice-Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishva Vidyalaya Palampur, Distt. Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishva Vidyalaya Palampur, District Kangra, H.P. *..Respondents.*

25-05-2018 Present : None for the petitioner.
Sh. Umesh Nath Dhiman, Adv. *vice* of Smt. Rajni Katoch, Adv. csl. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 A.M. Be awaited and put up after lunch hours.

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

25-05-2018 Present : None for the petitioner.
Sh. Umesh Nath Dhiman, Adv. *vice* of Smt. Rajni Katoch, Adv. csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
25-05-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. 24/ 2017

Smt. Champa Devi w/o Sh. Mohan Singh, r/o Village and P.O. Malan, Tehsil & District Kangra, H.P. ..Petitioner.

Versus

1. The Vice-Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishva Vidyalaya Palampur, Distt. Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishva Vidyalaya Palampur, District Kangra, H.P. ..Respondents.

25-05-2018 Present : None for the petitioner.
Sh. Umesh Nath Dhiman, Adv. *vice* of Smt. Rajni Katoch, Adv. csl. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.35 A.M. Be awaited and put up after lunch hours.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

25-05-2018 Present : None for the petitioner.
Sh. Umesh Nath Dhiman, Adv. *vice* of Smt. Rajni Katoch, Adv. csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
25-05-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. 07/ 2016

Smt. Bhim Dei w/o Shri Vidya Sagar, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, I.P.H/H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *..Respondent.*

25-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.38 A.M. Be awaited and put up after lunch hours.

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

25-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.42 P.M. None appearance of petitioner or his Id. Authorised Representative today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
25-05-2018

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 857/2016
Date of Institution : 26-11-2016
Date of decision : 25-05-2018

Smt. Vandana Kumari d/o Sh. Srikant Vyas, r/o Village & Post Office Daroh, Tehsil Palampur, District Kangra, H.P. ..Petitioner.

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh, Shimla
2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. ..Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Vandana Kumari, d/o Sh. Sanjeev Sharma r/o VPO Daroh, Tehsil Palampur, Distt. Kangra, H.P. *w.e.f.* 1-4-2006 by (1) the Principal Chief Conservator of Forests, Himachal Pradesh, Shimla-1 and (2) the Divisional Forest Officer, Forest Division Palampur, Distt. Kangra H.P. who had worked as beldar on daily wages basis from 1-12-1995 to 31-3-2006 and has raised her industrial dispute *vide* demand notice dated 10-4-2015 after more than 9 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that she had been engaged on daily waged basis on muster-roll *w.e.f.* December 1995 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides she had also worked with Bishan Dass and Sushil Kumar and that she continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to her utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent *w.e.f.* 31-3-2006 without prior

notice. On questioning the department about her retrenchment, she was informed that Government had decided to close the IGCP Palampur and her services were no more required. It is claimed that at the time of her unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17-11-2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by State Government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category-wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed her willingness to respondent lastly on 11-2-2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. *i.e.* Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar *w.e.f.* 5-9-1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31-12-2001 without any break who had completed 240 days in each calendar year but her services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua her illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP No. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition No. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent alongwith the petitioner had sought information under RTI Act and *vide* letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar

had been reengaged by respondent on 30-8-2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner *w.e.f.* 1-4-2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 1-4-2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply *inter-alia* taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non-joinder of necessary parties and that closure of IGCP Palampur was due to non-availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and her appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5-9-1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at her sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC, Ex. PW1/A, copy of letter dated 21-12-2004 Ex. PW1/B, copy of letter dated 1-1-2009 Ex. PW1/C, copy of letter dated 15-12-2009 Ex. PW1/D, copy of letter dated 3-12-2009 Ex. PW1/E, copy of letter dated 15-2-2006 Ex. PW1/F, copy of letter dated 29-2-2004 Ex. PW1/G, copy of letter dated 17-11-2008 Ex. PW1/H, copy of letter dated 2-1-2014 Ex. PW1/I, copy of letter dated 21-9-1994 Ex. PW1/J, copy of experience certificate of Shyam Lal Ex. PW1/K, copy of RTI information dated 4-1-2011 Ex. PW1/L, copy of RTI information dated 22-9-2014, 11-9-2014, 18-9-2014 Ex. PW1/M, copy of judgment dated 1-12-2009 Ex. PW1/N, copy of appeal of appeal order dated 28-2-2013 Ex. PW1/O, copy of RTI information dated 1-1-2014 Ex. PW1/P, copy of order of Bishan Dass dated 2-12-2008 Ex. PW1/Q, copy of letter dated 20-2-2009 and 12-5-2009 Ex. RW1/R, copy of experience certificate of petitioner Ex. RW1/S and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved her affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed on 18-10-2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondents *w.e.f.* 1-4-2006 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*
- (5) Whether the claim petition is bad for non-joinder of necessary party as alleged? ..*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	Unpressed
Issue No. 4	:	No
Issue No. 5	:	Unpressed
Relief	:	Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to Govt. of H.P. and Principal Chief Conservator of Forest, H.P. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Co-operative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of Government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the

continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

12. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) *supra* that workman ought to have been apprised or made aware of the fact that her employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster-roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Suresh Kumar figures at serial no.11 who is shown to have been appointed on 18.7.1993 and continued to work till 2006 when she was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for 190 days in 1999, 278 days in 2000, 346 days in 2001, 365 days in 2002, 363 days in 2003, 340 days in 2004, 297 days in 2005 and 72 days in 2006. Be it noticed that petitioner had worked for more than 240 days ever since 1999 till 2006 immediately prior to her retrenchment. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

13. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that she had worked on daily wage basis on muster-roll *w.e.f.* June 1999 without any appointment order or without settlement of any terms and conditions of her service and that she had been deputed by respondent *vide* verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that she had worked with forest department however has denied that she has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster-roll basis by the forest department but her seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/F was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination

that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to her office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to her office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

14. The plea of petitioner further remains that after her retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government nor forest department H.P. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/E stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15-12-2009 Ex. PW1/D was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category-wise names of list of employees of Kandi project as well as IGCP Palampur for their written consent. Not only this, petitioner had been issued letter dated 21-1-2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11-2-2010. It is evident from letter Ex. PW1/R dated 20-2-2009 of Divisional Forest Officer Palampur whereby petitioner was intimated about existence of various government departments and that Joint Secretary (Forests) to the Govt. of H.P. *vide* letter dated 12-2-2009 has proposed to engage daily wage workers including petitioner. Thus, it seems that in the year 2009 through correspondence petitioner was assured qua absorption in other government departments however till raising of industrial dispute by petitioner and consequently receiving reference from the Labour Commissioner, petitioner was not absorbed or engaged in other govt. departments despite repeated assurances. Thus, the very fact that government through its official agency was in touch with the petitioner for her case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on her termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award dated 02-12-2008 passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department who was later deputed to work with IGCP Palampur. It has not been disputed by Id. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award dated 2-12-2008 in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal filed by State Govt. of H.P. against judgment of Hon'ble High Court of H.P., award aforesaid passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

15. It is also evident from evidence on record that IGCP Palampur was under the complete control of State Government as Project Director, Member-Secretary of Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the

Societies Act besides authorized to do so by Chairman, Secretary (Forests) to the Govt. of H.P. It is evident from para no. 5 of the affidavit Ex. PW1/A which has remained unchallenged in cross-examination that IGCP Palampur was under the control of Divisional Forest Officer Palampur which was monitored by a high powered committee headed by Principal Chief Conservator of Forest. Thus, it establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as has come in evidence. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster-rolls or wage bills which could remove mystery of petitioner being employed with the IGCP Palampur. Thus, even when IGCP Palampur was controlled through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. **However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur.** Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

16. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same, the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void *ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, her termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void *ab-initio* as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested her entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

17. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that

she was employed as agriculturist. This would also establish that after her retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched from service without compliance of Section 25-F of the Act although remained gainfully employed after her retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent *w.e.f.* 1st April, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

Issue No. 4:

18. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 1-4-2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Dy. D.A., Ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in her evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, she was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

Issues No. 3 & 5:

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 797/2016
Date of Institution : 19-11-2016
Date of decision : 25-05-2018

Shri Ravi Kumar s/o Shri M.C. Rana, r/o Village Patt, P.O. Chobin, Tehsil Baijnath, District Kangra, H.P. *..Petitioner.*

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh, Shimla
2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. *..Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Ravi Kumar s/o Sh. M.C. Rana, r/o Village Patt, P.O. Chobin, Tehsil Baijnath, Distt. Kangra, H.P. *w.e.f.* 1-4-2006 by (1) the Principal Chief Conservator of Forests, Himachal Pradesh, Shimla-171001 & (2) the Divisional Forest Officer, Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis *w.e.f.* 1-12-1998 to 31-3-2006 and has raised his industrial dispute *vide* demand notice dated 15-7-2015 after more than 9 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster-roll *w.e.f.* December 1998 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent *w.e.f.* 31-3-2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17-11-2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by State Government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff

there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category-wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11-2-2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. *i.e.* Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar *w.e.f.* 5-9-1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31-12-2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no. 117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP No. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P. consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition No. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent alongwith the petitioner had sought information under RTI Act and *vide* letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30-8-2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner *w.e.f.* 1-4-2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 1-4-2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply *inter-alia* taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non-joinder of necessary parties and that closure of IGCP Palampur was due to non-availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also

asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5-9-1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A, copy of letter dated 21-12-2004 Ex. PW1/B, copy of letter dated 1-1-2009 Ex. PW1/C, copy of letter dated 15-12-2009 Ex. PW1/D, copy of letter dated 3-12-2009 Ex. PW1/E, copy of letter dated 15-2-2006 Ex. PW1/F, copy of letter dated 29-2-2004 Ex. PW1/G, copy of letter dated 17-11-2008 Ex. PW1/H, copy of letter dated 2-1-2014 Ex. PW1/I, copy of letter dated 21-9-1994 Ex. PW1/J, copy of experience certificate of Shyam Lal Ex. PW1/K, copy of RTI information dated 4-1-2011 Ex. PW1/L, copy of RTI information dated 22-9-2014, 11-9-2014, 18-9-2014 Ex. PW1/M, copy of judgment dated 1-12-2009 Ex. PW1/N, copy of appeal of appeal order dated 28-2-2013 Ex. PW1/O, copy of RTI information dated 1-1-2014 Ex. PW1/P, copy of order of Bishan Dass dated 2-12-2008 Ex. PW1/Q, copy of letter dated 12-5-2009 and 1-1-2010 Ex. PW1/R, copy of RTI dated 14-8-2014 Ex. PW1/S and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed on 18-10-2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondents *w.e.f.* 1-4-2006 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*
- (5) Whether the claim petition is bad for non-joinder of necessary party as alleged? ..*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Discussed

Issue No. 3	:	Unpressed
Issue No. 4	:	No
Issue No. 5	:	Unpressed
Relief	:	Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues Nos. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, H.P. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Co-operative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of Government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon^{ble} Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon^{ble} Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

12. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) *supra* that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed

only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster-roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Suresh Kumar figures at serial no. 11 who is shown to have been appointed on 18-7-1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for 31 days in 1998, 363 days in 1999, 365 days in 2000, 367 days in 2001, 365 days in 2002, 361 days in 2003, 359 days in 2004, 268 days in 2005 and 31 days in 2006. Be it noticed that petitioner had worked for more than 240 days ever since 1998 till 2006 immediately prior to his retrenchment. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

13. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster-roll *w.e.f.* December 1998 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster-roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/F was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

14. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government nor forest department H.P. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/E stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15-12-2009 Ex. PW1/D was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief

Conservator of Forests for sending category-wise names of list of employees of Kandi project as well as IGCP Palampur for their written consent. Not only this, petitioner had been issued letter dated 21-1-2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11-2-2010. It is evident from letter Ex. PW1/R dated 21-1-2010 of Divisional Forest Officer Palampur whereby petitioner was intimated about existence of various government departments and that Joint Secretary (Forests) to the Govt. of H.P. *vide* letter dated 1-1-2010 has proposed to engage daily wage workers including petitioner. Thus, it seems that in the year 2010 through correspondence petitioner was assured qua absorption in other government departments however till raising of industrial dispute by petitioner and consequently receiving reference from the Labour Commissioner, petitioner was not absorbed or engaged in other govt. departments despite repeated assurances. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award dated 02-12-2008 passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department who was later deputed to work with IGCP Palampur. It has not been disputed by Id. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award dated 2-12-2008 in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal filed by State Govt. of H.P. against judgment of Hon'ble High Court of H.P., award aforesaid passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

15. It is also evident from evidence on record that IGCP Palampur was under the complete control of State Government as Project Director, Member-Secretary of Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act besides authorized to do so by Chairman, Secretary (Forests) to the Govt. of H.P. It is evident from para no. 5 of the affidavit Ex. PW1/A which has remained unchallenged in cross-examination that IGCP Palampur was under the control of Divisional Forest Officer Palampur which was monitored by a high powered committee headed by Principal Chief Conservator of Forest. Thus, it establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as has come in evidence. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster-rolls or wage bills which could remove mystery of petitioner being employed with the IGCP Palampur. Thus, even when IGCP Palampur was controlled through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. **However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur.** Not only this, even on the analogy of case of Bishan Dass,

as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

16. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same, the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void *ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void *ab-initio* as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

17. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the foregoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched from service without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent *w.e.f.* 1st April, 2006 was illegal and

unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

Issue No. 4:

18. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 1.4.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Dy. D.A., ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

Issues Nos. 3 & 5

19. Both these issues were not pressed by Ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

Ref. No. : 478/2015
Date of Institution : 09-11-2015
Date of decision : 25-05-2018

Versus

Reference under section 10 (1) of the Industrial Disputes Act, 1947

AWARD

“Whether the industrial dispute raised by the worker Shri Suresh Kumar s/o Shri Bhim Singh, r/o Village Naloh, P.O. Balha, Tehsil Palampur, District Kangra, H.P. before the Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. *vide* demand notice dated 04-06 2011 regarding his alleged termination of services *w.e.f.* 01-04-2006 suffers from delay and latches? If not, whether termination of services of Shri Suresh Kumar s/o Shri Bhim Singh, r/o Village Naloh, P.O. Balha, Tehsil Palampur, District Kangra, H.P. by the Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. *w.e.f.* 01-04-2006, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster-roll *w.e.f.* June 1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent *w.e.f.* 31-3-2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government

had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17-11-2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by State Government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category-wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11-2-2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. *i.e.* Labour Commissioner, Shimla.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar *w.e.f.* 5-9-1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31-12-2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no. 117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP No. 2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition No. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent alongwith the petitioner had sought information under RTI Act and *vide* letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30-8-2013 who is presently working with the respondent

department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner *w.e.f.* 31-3-2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31-3-2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply *inter-alia* taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non-joinder of necessary parties and that closure of IGCP Palampur was due to non-availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5-9-1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A, copy of letter dated 21-12-2004 Ex. PW1/B, copy of letter dated 1-1-2009 Ex. PW1/C, copy of letter dated 15-12-2009 Ex. PW1/D, copy of letter dated 3-12-2009 Ex. PW1/E, copy of letter dated 15-2-2006 Ex. PW1/F, copy of letter dated 29-2-2004 Ex. PW1/G, copy of letter dated 17-11-2008 Ex. PW1/H, copy of letter dated 2-1-2014 Ex. PW1/I, copy of letter dated 21-9-1994 Ex. PW1/J, copy of RTI information dated 4-1-2011 Ex. PW1/K, copy of RTI information dated 22-9-2014, 11-9-2014, 18-9-2014 Ex. PW1/L, copy of judgment dated 1-12-2009 Ex. PW1/M, copy of appeal of appeal order dated 28-2-2013 Ex. PW1/N, copy of RTI information dated 1-1-2014 Ex. PW1/O, copy of order dated 2-12-2008 Ex. PW1/P, copy of RTI dated 14-8-2014 Ex. PW1/Q, copy of letter dated 20-2-2006 Ex. PW1/R, copy of letter dated 21-1-2010 Ex. PW1/S and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of notice dated 20-2-2006 Ex. RW1/C and closed evidence.

7. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed by on 22-3-2015 for determination:—

- (1) Whether the industrial dispute raised by petitioner vide demand notice dated 4-6-2011 qua his termination of service *w.e.f.* 1-4-2006 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? *..OPP.*
- (2) Whether termination of the services of petitioner by the respondent *w.e.f.* 1-4-2006 is/was illegal and unjustified as alleged? *..OPP.*
- (3) If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*
- (4) Whether the present claim petition is not maintainable in the present form as alleged? *..OPR.*
- (5) Whether the present claim is bad for non-joinder of necessary party as alleged? If so, its effect? *..OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:—

Issue No. 1	:	Discussed
Issue No. 2	:	Yes
Issue No. 3	:	Discussed
Issue No. 4	:	No
Issue No. 5	:	Unpressed
Relief	:	Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner was employed in IGCP Palampur a foreign aided project besides the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to Govt. of H.P. and Principal Chief Conservator of Forest, H.P. It is also admitted case of respondent that IGCP Palampur had been closed in 2006 and on the closure of project, the EcoDevelopment Society registered with the Registrar Co-operative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of Government of H.P. It is equally admitted case of parties that no

appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

12. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) *supra* that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1, it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster-roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Suresh Kumar figures at serial no.11 who is shown to have been appointed on 18-7-1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for 131 days in 1993, 249 days in 1994, 317 days in 1995, 344 days in 1996, 288 days in 1997, 359 days in 1998, 240 days in 1999, 282 days in 2000, 271 days in 2001, 318 days in 2002, 317 days in 2003, 300 days in 2004, 233 days in 2005 and 90 days in 2006. Be it noticed that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

13. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster-roll *w.e.f.* March, 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in

project. Since records produced by parties clearly revealed that engagement of petitioner on muster-roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/F was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties. Moreover, no official of Eco Development Society or IGCP has been examined by respondent to negate the claim of petitioner.

14. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government nor forest department H.P. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/E stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15-12-2009 Ex. PW1/D was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category-wise names of list of employees of Kandi project as well as IGCP Palampur for their written consent. Not only this, petitioner had been issued letter dated 21-1-2010 by Divisional Forest Officer, Palampur letter Ex. PW1/S in which willingness of the petitioner was sought on or before 11-2-2010. It is evident from letter Ex. PW1/S dated 21-1-2010 of Divisional Forest Officer Palampur whereby petitioner was intimated about existence of various government departments and that Joint Secretary (Forests) to the Govt. of H.P. *vide* letter dated 1-1-2010 has proposed to engage daily wage workers including petitioner. Thus, it seems that in the year 2010 through correspondence petitioner was assured qua absorption in other government departments however till raising of industrial dispute by petitioner and consequently receiving reference from the Labour Commissioner, petitioner was not absorbed or engaged in other govt. departments despite repeated assurances. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award dated 02-12-2008 passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department who was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award dated 2-12-2008 in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal filed by State Govt. of H.P. against judgment of Hon'ble High Court of H.P., award aforesaid passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with

seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

15. It is also evident from evidence on record that IGCP Palampur was under the complete control of State Government as Project Director, Member-Secretary of Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act besides authorized to do so by Chairman, Secretary (Forests) to the Govt. of H.P. It is evident from para no.5 of the affidavit Ex. PW1/A which has remained unchallenged in cross-examination that IGCP Palampur was under the control of Divisional Forest Officer Palampur which was monitored by a high powered committee headed by Principal Chief Conservator of Forest. Thus, it establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as has come in evidence. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with the IGCP Palampur. Thus, even when IGCP Palampur was controlled through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project rather it is the State Govt. which is liable to redress grievance of the petitioner. **However, Divisional Forest Officer Palampur who is employee of State Forest Department was essentially involved in project work in question and also saddled with the responsibility of taking charge of entire project as stated in foregoing paras, could be in law fastened with the liability of satisfying award on behalf of IGCP Palampur.** Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

16. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same, the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void *ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void *ab-initio* as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the*

employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments”.

17. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. **Ld. Dy. District Attorney** has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain his and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched from service without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent *w.e.f.* 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

18. **Ld. Dy. D.A.** representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31-3-2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by **Ld. Dy. D.A.**, **ld. counsel/AR** for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally

raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

Issues No. 4 & 5:

19. Both these issues were not pressed by ld. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. 762/ 2016

Sh. Chain Singh s/o Sh. Kaur Ram, r/o Village Kamla, P.O. Garnota, Tehsil Bhatiyat, District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer/Addl. Superintending Engineer, Electrical Division, HPSEBL Dalhousie, District Chamba, H.P. ..Respondent.

26-05-2018 Present : None for the petitioner.

Sh. Karan Pathania, Adv. Csl. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

26-05-2018 Present : None for the petitioner.
Sh. Karan Pathania, ASdv. Csl. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:

26-05-2018

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. 839/ 2016

Sh. Paras Ram s/o Sh. Lal Singh, r/o Village Kamla, P.O. Garnota, Tehsil Bhatiyat, District Chamba, H.P. ..Petitioner.

Versus

The Additional Superintending Engineer, Electrical Division, HPSEBL Dalhousie, District Chamba, H.P. ..Respondent.

26-05-2018 Present : None for the petitioner.
Sh. Karan Pathania, Adv. Csl. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

26-05-2018 Present : None for the petitioner.
Sh. Karan Pathania, adv. csl. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

26-05-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. 290/ 2015

Sh. Mahesh Kumar s/o Sh. Netar Singh, r/o Village Kandhi Tarapur, P.O. Gagal, Tehsil Sadar, District Mandi, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Mandi Forest Division, District Mandi, H.P. *..Respondent.*

29-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.32 A.M. Be awaited and put up after lunch hours.

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

29-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.33 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is

not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
29-05-2018

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 393/2014
Date of Institution : 16-12-2014
Date of decision : 29-05-2018

Shri Dhani Ram s/o Shri Lalu Ram, r/o Village Algan, P.O. Kataula, Tehsil Sadar, District
Mandi, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Mandi, Forest Division Mandi, District Mandi, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.P. Parmar, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:—

“Whether time to time termination of the services of Shri Dhani Ram s/o Shri Lalu Ram, r/o Village Algan, P.O. Kataula, Tehsil Sadar, District Mandi, H.P. during year 2000 to 2013 and finally during May 2013 by the Divisional Forest Officer Mandi, Forest Division Mandi, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily waged beldar in the year 1989 who continuously worked upto May 2015. Averments made in the claim petition revealed that petitioner had worked for 240 days in each calendar year ever since he was appointed who had been given illegal/artificial breaks during this period by respondent. It is alleged that petitioner had been retrenched from service by order of respondent no. 4 Range Officer Kataula with assigning any reason as petitioner had approached this court for regularization. It is alleged that persons junior to him namely S/Sh. Rattan, Dharam Pal, Diwan, Vinod, Brij Lal, Inder Dev, Jhabe Ram, Bimla Devi, Dharam Singh, Devender Singh, Bale Ram, Shesh Ram, Nirmala Devi, Amar Singh have been regularized who consequently retired from service. It is alleged that workers were regularized after completion of 10 years of service in different years from 1997 to 2007 but petitioner having worked for more than 24 years has not been regularized and thus the action of respondent was arbitrary and discriminatory. It is alleged that respondent had not only given artificial breaks to petitioner as stated above but also terminated his service in month of May 2015. It is alleged that as per policy of H.P. Govt. employees who have rendered 8 years continuous service had been regularized and even after rendering five years of service in the education department the teachers had been regularized. It is alleged that Inder Dev has been regularized in the year 1998 after completion of 10 years of service who was minor whose date of birth was 20-5-1974 and respondent had taken engaged him when he was of the age of 14 years who had been provided regular muster-rolls and his service had been regularized in the year 1998. Feeling aggrieved with the action of the respondent in retrenching service of petitioner which clearly violated provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act for brevity) besides doctrine of principle of 'Last come First go' as envisaged under Section 25-H of the Act was not followed. The grievance of the petitioner also remains that muster-rolls to petitioner from 1989 to May 2015 had been supplied and these documents had been destroyed by respondent so that petitioner could not seek regularization. Accordingly, direction has been sought for quashing oral order of May 2015 respondent department with further direction to reinstate petitioner from date of retrenchment besides has prayed for regularization after completion of ten/eight years of service and all consequential benefits arising out of regularization.

4. Respondent resisted claim petition, filed reply *inter-alia* taken preliminary objections of maintainability. On merits asserted that the works of forest department were seasonal in nature and time bound and the workers were engaged subject to availability of works and funds including petitioner who did not attend job regularly and as such there was breaks in service those were not given deliberately. It is admitted that petitioner had been engaged for the first time for forestry works in the month of February 1989 by Range Officer Kataula, Mandi and as per the mandays chart, petitioner had not completed 240 days in each calendar year *w.e.f.* 1989 to 2013. It is specifically alleged that petitioner has rendered service for 108 days in the year 1989, 11 days in 1993, 29 days in 1994, 56 days in 1995, 20 days in 1996, 35 days in 1997, 142 days in 1998, 93 days in 1999, 141 days in 2000, 145 days in 2001, 15 days in 2002, 68 days in 2003, 100 days in 2004, 85 days in 2007, 30 days in 2008, 33 days in 2009, 57 days in 2010, 20 days in 2012 and 45 days in 2013 but denied that petitioner had worked from 1990 to 1992 and in 2011. It is claimed that petitioner had remained absent thereafter for a long period of his own accord. It is contended that petitioner used to come and go and accepted the work as per his own sweet will and convenience as such respondent had not violated any provisions of the Act. It is contended that persons namely S/Sh. Rattan, Dharam Pal, Diwan, Vinod and Brij Lal did not complete 240 days as such they were not regularized. Further stated that remaining persons *i.e.* Inder Dev, Jhabe Ram, Bimla Devi, Dharam Singh, Devender Singh, Bale Ram, Sesh Ram, Nirmala Devi and Amar Singh who have been completed 240 days of their service had been regularized as per policy of government. In so far as appointment of Inder Dev is concerned, he was engaged as adolescent

labour in the year 1988 and remained child labour upto May 1992 and after that he was made daily wager upto 1998 and thus respondent had violated any recruitment rules. It is denied that respondent had deliberately given intermittent breaks to the petitioner who did not complete 240 days who was not entitled to the benefit of provisions of Section 25-B of the Act. That being so there was no necessity to serve notice to the petitioner under Section 25-F of the Act. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 by way of examination-in-chief. The petitioner had examined PW2 Shri Jiwa s/o Ganga Ram, Chowkidar, office of Range Officer, Forest Range Kataula, Mandi, tendered/proved his affidavit Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rakesh Kumar, Divisional Forest Officer, Mandi, tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copies of mandays charts of S/Sh. Rattan Chand, Dharam Pal, Diwan Chand, Vinod Kumar, Brij Lal, Rattan Chand Ex. RW1/C to RW1/H respectively, copy of schedule of work and labour rate Ex. RW1/I, copy of preface dated 31-3-1994 Ex. RW1/J and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 26-4-2016 for determination:—

- (1) Whether time to time termination of the services of petitioner during year 2000 to 2013 by the respondent is illegal and unjustified as alleged? ..*OPP.*
- (2) Whether final termination of services of the petitioner by the respondent during May 2013 is illegal and unjustified as alleged? ..*OPP.*
- (3) If issue no.1 & issue no.2 or both are proved in affirmative to what relief petitioner is entitled to? ..*OPP.*
- (4) Whether the present claim petition is not maintainable in the present form as alleged? ..*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that the allegation of petitioner remains that he was terminated in the month of May 2013 by Divisional Forest Officer, Mandi preceded by time to time termination from 2002 to 2013. Before adverting to merits of this case, it would be apt to mention here that the mandays chart relied upon by the petitioner in unambiguous terms revealed that petitioner had not worked till May 2015 as he worked upto May 2013. It is equally evident from mandays chart that petitioner had been engaged in the month of February 1989 and thereafter he continued to work with breaks in his service as reflected in the mandays chart referred to above but factually did not work in the year 1990 to 1992 and in 2011.

12. Stepping into witness box as PW1 petitioner has testified on oath to have been engaged in the month of February 1989 as daily waged beldar who thereafter continuously worked from 1989 to 2015. He has categorically deposed in examination-in-chief that respondent had retrenched him from service without any notice or compensation due to which he moved to this court, He has further stated that several workers junior to him have been regularized who were not retrenched and that respondent had violated doctrine of 'Last come First go'. Testimony of petitioner further reveals that one workman namely Inder Dev aged about 14 years was engaged in violation of rules and was consequently regularized by the respondent/department. He has further stated that he had never abandoned the job rather he worked under different scheme of respondent. Cross-examination of petitioner reveals that he had worked till May 2013. He has denied that he had not worked with respondent from 1990 to 1992 and 2011. It is evident from the mandays chart that petitioner had merely worked for 45 days in the year 2013 and 20 days in 2012 meaning thereby that immediately preceding 12 months from termination he actually worked for 65 days, thus, it cannot be stated that petitioner had worked for 240 days attracting the provisions of Section 25-F of the Act. Since the petitioner had not completed 240 days, it was not necessary for the respondent to have either issue notice qua retrenchment or compensation in lieu thereof as testimony of petitioner is not substantiated from documentary evidence on record establishing to have worked for requisite number of days so as to attract applicability of provisions of Section 25-F of the Act as stated above. PW2 Jiwa Nand s/o Ganga Ram had sworn affidavit Ex. PW2/A supporting case of petitioner. This witness has stated to have been engaged in 1988 by respondent whose services were regularized in year 1998 after 10 years of service besides petitioner was also engaged as daily rated worker in the year 1988/1989 by forest department who continuously worked with the respondent/department without any break till his retrenchment in May 2015. He has also stated in his affidavit that Dhani Ram was not marked as per actual presence at work by respondent due to which his service could not be regularized. Further denied that petitioner had abandoned the job at his own sweet will rather asserted that respondent Range Officer, Kataula had verbally terminated service of petitioner. Cross-examination of this witness does not inspire confidence as he has admitted that he as well as petitioner had never worked in same beat besides admitted that the attendance of workers was not marked in his presence which further establishes that PW2 had no occasion to have factually noticed petitioner marking his attendance and thus he could not be believed that attendance of petitioner was not marked correctly by the respondent. PW2 being interested witness gets surfaced from cross-examination wherein he has admitted that petitioner should also regularized like him. As such, when PW2 had worked in different beats and that attendance of no workers was being marked in his presence uncorroborated testimony of (PW1) petitioner that his attendance was not marked correctly by respondent could not be accepted and at the same time testimony of PW2 being interested witness could not be relied. On the other hand, repudiating evidence led by the petitioner, respondent RW1 Shri Rakesh Kumar, Divisional Forest Officer has stepped into witness box and stated that petitioner remained engaged from February 1989 by Range Officer Kataula and worked till May 2013. He has proved number of days petitioner factually worked and that petitioner did not work in the years 1990 to 1992 and in 2011. Cross-examination RW1 revealed that mandays chart as per record of his office that Dharam Chand, Devender Kumar and Bale Ram have been regularized who were junior to petitioner. He has admitted that as per record that petitioner was not served any notice before his retrenchment

although admitted that attendance of petitioner was actually marked whenever he worked assigned by respondent. The grievance of petitioner also remains as can be gathered from claim petition that he had applied certain documents under RTI Act which has not been supplied to him. There is no iota of evidence or say documentary evidence substantiating plea of petitioner that he had factually moved to obtain muster-roll so as to prove his attendance under RTI Act and stated of his own that the said record had been destroyed without any basis or say legal evidence rather petitioner was making a false or say concocted story of non-availability of record. On the other hand, testimony of RW1 who is the public servant and maintained the records in discharge of his official duties could not be disbelieved rather version of petitioner which is not substantiates from any corresponding evidence has to be disbelieved. Even if RW1 had admitted that several workmen as stated in cross-examination have been regularized would not *ipso facto* entitle petitioner relief sought for as he was required to establish that in the month of May 2015 he was terminated and these persons being junior to petitioner were retained and regularized. There is no reliable evidence on record which would establish that petitioner had worked as reference received from the appropriate government revealed termination of petitioner in the year 2013. Since the petitioner had failed to establish that he factually worked till 2015 with respondent the relief of final termination could not be granted in his favour since per his own version petitioner claimed to be working in the year 2015 with respondent whereas reference received from appropriate govt. related to termination of petitioner in the year 2013 qua illegal termination in the month of May 2013. If petitioner was working till May 2015 he could not have been terminated by respondent in 2013. On this score reference has to be answered in negative.

13. In so far as time to time termination of petitioner from 2002 to 2013 is concerned, no seniority list has been proved or produced by the petitioner. On the other hand, respondent has led reliable evidence establishing mandays charts of Rattan Chand Ex. RW1/C, Dharampal Ex. RW1/D, Diwan Chand Ex. RW1/E, Vinod Kumar Ex. RW1/F and Brij Lal Ex. RW1/G mandays chart of workers Ex. RW1/H. These are the mandays charts of various workers who joined and were junior to petitioner who had been retained in service but reference relates to time to time termination in the year from 2002 to 2013 which no manner touches year 2015 and thus it cannot be stated that there was time to time termination of petitioner by respondent till May 2015. As such, even in absence of seniority list, this court holds that several workers as enumerated in Ex. RW1/D to Ex. RW1/F have been retained by respondent ignoring rights of petitioner was retrenched but certainly petitioner was not retrenched in 2015 as claimed by him as such, respondent has not violated provisions of Section 25-H of the Act irrespective of fact that there existed sufficient work and funds but petitioner has failed to prove that time to time termination of petitioner by respondent was deliberate and fictional in nature till May 2013 as he claimed to be working with respondent till 2015. On this score also, petitioner would not be entitled any relief.

14. In so far as engagement of Inder Dev at the age of 14 years and thereafter making him daily wager and regularizing his services per policy of govt. is concerned, the same has been done in consonance with rules. Ex. RW1/C dated 19-4-2018 preface signed by Conservator of Forest Mandi and its annexure clearly provided for engagement of Adolscent labour (unskilled labour) at the rate of Rs. 9/- whereas full gross adult labour was engaged at the rate of Rs. 18/- per day. That being so, a labour below 18 years could be engaged and by doing so no rule or law was violated by respondent. Said Inder Dev was regularized after attaining age of majority as per version of RW1 in cross-examination. It is unclear from evidence of petitioner as to when said Inder Dev was engaged and if he was junior to petitioner. In any case plea of petitioner qua engagement of Inder Dev being below 18 years and regularized does not come to rescue of petitioner as period when he was regularized, he was junior to petitioner. The fact that petitioner claimed to be working after May 2013 till May 2015 beyond reference period and thus it cannot be stated that petitioner was given intermittent breaks ever since he was initially engaged till terminated May 2015 as claimed by him rather he was neither given intermittent breaks till May 2015 nor finally terminated in 2015 as

reference pertained for time to time termination from 2002 to 2013 and not 2015 and similarly final termination till 2013 and not 2015. Accordingly, issues no. 1 to 2 are answered in negative and for similar reasons, issue no. 3 is also answered in negative which are decided against petitioner and in favour of respondent.

Issue No. 4:

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster-roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Relief:

16. As a sequel to my findings on foregoing issues no.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. 372/2015

Smt. Nirmla Devi w/o Sh. Adam Ram, r/o Village Birnu, P.O. & Sub-Tehsil Nihari, District
Mandi, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sundernagar, District Mandi, H.P.
..Respondent.

29-05-2018 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

29-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or her ld. counsel today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

29-05-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. 328/ 2016

Sh. Prakash Chand s/o Sh. Hari Singh Village Chah, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Petitioner.

Versus

1. The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P.
2. The Engineer-in-Chief, HPPWD, US Club, Shimla, H.P. ..Respondents.

30-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due affixation. It is 11.30 A.M. Be awaited and put up after lunch hours.

K.K.SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

30-05-2018 Present : None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:

30-05-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 151/2013
Date of Institution : 09-09-2013
Date of Decision : 30-05-2018

Catch Factory Workers Union, Raison, District Kullu, H.P. through The President/General Secretary ..*Petitioner.*

Versus

The Occupier/Factory Manager, Dharampal Satpal Limited, Unit-II, V.P.O. Raison, Teshil & District Kullu, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

ORDER/AWARD

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether transfer of the services of 1. Sh. Gopal Singh s/o Sh. Prem Chand Negi, 2. Sh. Jeet Ram s/o Sh. Jogi Ram, 3. Raj Kumar s/o Sh. Raguvir Singh & 4. Sh. Gulshan Kumar s/o Sh. Amar Kishori Sharma from M/s Dharampal Satpal Limited, Unit II, V.P.O. Raison, Tehsil & Distt. Kullu, H.P. to M/s Dharampal Satyapal Lt. Canpack Division, A-34-35, Sector 60, Noida (U.P.), by the Employer/Factory Manager, Dharampal Satpal Limited, Unit-II, V.P.O. Raison, Tehsil & Distt. KULLU, H.P. vide orders dated 25-7-2013, is legal and justified? If not, what relief the above aggrieved workers are entitled to from the above management/employer?”

2. "Whether resorting to strike by the workers of M/s Dharampal Satpal Limited, V.P.O. Raison, Tehsil & Distt. Kullu, H.P. *w.e.f.* 29-7-2013 on account of opposing the transfer orders dated 25-7-2013 of the services of Sh. Sohan Lal s/o Sh. Kuram Dutt from M/s Dharampal Satpal Limited, V.P.O. Raison, Tehsil & Distt. Kullu, H.P. and 1. Sh. Gopal Singh s/o Sh. Prem Chand Negi, 2. Sh. Jeet Ram s/o Sh. Jogi Ram, 3. Raj Kumar Rai s/o Sh. Raguvir Singh & 4. Sh. Gulshan Kumar s/o Sh. Amar Kishori Sharma from M/s Dharampal Satpal Limited, Unit-II, V.P.O. Raison, Tehsil & Distt. Kullu, H.P. to M/s Dharampal Satpal Lt. Canpack Division, A-34-35, Sector 60, Noida (U.P.), by the Factory Manager, Dharampal Satpal Limited, V.P.O. Raison, Tehsil & Distt. Kullu, H.P. is legal and justified?"

30-5-2018 Present: Petitioners no. 1 to 4 namely S/Sh. Gopal Singh, Jeet Ram, Raj Kumar, Gulshan Kumar with Suresh Kumar Sharma, Adv.

Sh. Rahul Mahajan, Adv. with Sh. N.L. Kaundal, AR for respondent Company.

Sh. Rajesh Sarao, AGM of M/s DS Drinks and Bev. Private Limited, Raison, District Kullu, H.P.

Case taken up for further conciliation as a result of which parties have amicably resolved their dispute by entering into settlement. Heard. The respondent company through its AGM Shri Rajesh Sarao has proposed to give Rs. 75,000/-, Rs. 50,000/-, Rs. 75,000/- & Rs. 1,50,000/- to respondents no.1, 2, 3 & 4 respectively *vide* cheques No. 058628, 058629, 058630, 058631, 058632, 058625, 058626, 058627, 058619, 058620, 058621, 058622, 058623 and 058624 towards full and final settlement of claim arising out of Reference No. 151/2013. In addition to the above-said amount, it has also been proposed that leave encashment and other dues amounting to Rs. 8,891/-, Rs. 1,917/-, Rs. 8,583/- and Rs. 5,863/- payable to petitioners respectively has been agreed to paid for which cheque nos. 058323, 058321, 058319 & 058322 have been prepared besides agreed to release gratuity to all above named workmen within 30 days from today. The respondent company has also agreed to process EPF forms duly signed by all the above named workmen immediately to EPFO in accordance with EPF Act & Rules and these EPF forms duly filled and signed by all petitioners today have been handed over to Shri Rajesh Sarao, AGM of respondent company today in the court. It has also been proposed that while giving benefits as stated above in pursuance to settlement, the petitioners namely S/Sh. Gopal Singh, Jeet Ram, Raj Kumar and Gulshan Kumar shall have no lien on jobs with the respondent company which has been accepted by all the petitioners present in the court and have also admitted correctness terms and conditions of settlement as stated above.

2. Stepping into witness box petitioners 1 to 4 *vide* their separate statements on oath have accepted proposal of respondent company and acknowledged to have received payment aforesaid through various crossed cheques handed over to them separately by Sh. Rajesh Sarao, AGM of respondent company today in the court which is full and final settlement of their respective claims. At this stage, Shri Rajesh Sarao, AGM of respondent company *vide* his statement on oath has accepted correctness of statements so made by petitioners and his statement has been recorded and placed on file. In view of the statements made by the parties as stated above, the claim petitions of all the petitioners above named are disposed of accordingly, however, parties to reference shall be bound by settlement based on statements made before this court which shall constitute part of this award.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette.

5. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 152/2013
Date of Institution : 09-09-2013
Date of Decision : 30-05-2018

Catch Factory Workers Union, Raison, District Kullu, H.P. through President/General Secretary ..Petitioner.

Versus

The Occupier/Factory Manager, Dharampal Satpal Limited, Unit-II, V.P.O. Raison, Tehsil & District Kullu, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

ORDER/AWARD

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether transfer of the services of Sh. Sohan Lal s/o Sh. Kuram Dutt from M/s Dharampal Satpal Limited, Unit II, V.P.O. Raison, Tehsil & Distt. Kullu, H.P. to M/s Dharampal Satyapal Lt. Canpack Division, A-34-35, Sector 60, Noida (U.P.), by the Employer/Factory Manager, Dharampal Satpal Limited, Unit-II, V.P.O. Raison, Tehsil & Distt. Kullu, H.P. vide orders dated 25-7-2013, is legal and justified? If not, what relief the above aggrieved workers are entitled to from the above management/employer?”
2. “Whether resorting to strike by the workers of M/s Dharampal Satpal Limited, V.P.O. Raison, Tehsil & Distt. Kullu, H.P. w.e.f. 29-7-2013 on account of opposing the transfer orders dated 25-7-2013 of the services of Sh. Sohan Lal s/o Sh. Kuram Dutt from M/s Dharampal Satpal Limited, V.P.O. Raison, Tehsil & Distt. Kullu, H.P. and 1. Sh. Gopal Singh s/o Sh. Prem Chand Negi, 2. Sh. Jeet Ram s/o Sh. Jogi Ram, 3. Raj Kumar Rai s/o Sh. Raguvir Singh & 4. Sh. Gulshan Kumar s/o Sh. Amar Kishori

Sharma from M/s Dharampal Satpal Limited, Unit-II, V.P.O. Raison, Tehsil & Distt. Kullu, H.P. to M/s Dharampal Satpal Lt. Canpack Division, A-34-35, Sector 60, Noida (U.P.), by the Factory Manager, Dharampal Satpal Limited, V.P.O. Raison, Tehsil & Distt. Kullu, H.P. is legal and justified?"

30-5-2019 Present : Petitioner namely Sh. Sohan Lal with Sh. Suresh Kumar Sharma, Adv.
Sh. Rahul Mahajan, Adv. with Sh. N.L. Kaundal, AR for respondent.
Sh. Rajesh Sarao, AGM of M/s DS Drinks and Bev. Private Limited, Raison, District Kullu, H.P.

Case taken up for further conciliation as a result of which parties have amicably resolved their dispute by entering into settlement. Heard. The respondent company through its AGM Shri Rajesh Sarao has proposed to give Rs.1,50,000/- to respondent namely Sohan Lal *vide* cheques no. 058613, 058614, 058615, 058616, 058617, 058618 towards full and final settlement of claim arising out of Reference No. 152/2013. In addition to the above-said amount, it has also been proposed that leave encashment and other dues amounting to Rs. 12,201/- payable to petitioner has been agreed to paid for which cheque no. 058320 has been prepared and handed over to petitioner besides agreed to release gratuity to above named workman within 30 days from today. The respondent company has also agreed to process EPF form duly signed by the above named workman immediately to EPFO in accordance with EPF Act & Rules and EPF form duly filled and signed by the petitioner has been handed over to Shri Rajesh Sarao, AGM of respondent company today in the court. It has also been proposed by respondent company that while giving benefits as stated above to petitioner in pursuance to settlement, the petitioner namely Sohan Lal shall have no lien on job with the respondent company and petitioner present in the court has admitted settlement so arrived between the parties on the aforesaid terms and conditions.

2. Stepping into witness box petitioner Sohan Lal *vide* his separate statement on oath has accepted proposal of respondent company aforesaid and acknowledged to have received payment aforesaid through various crossed cheques handed over to him by Sh. Rajesh Sarao, AGM of respondent company today in the court which has been for full and final settlement of his claim. At this stage, Shri Rajesh Sarao, AGM of respondent company *vide* his statement on oath has accepted correctness of statement so made by petitioner and his statement to this effect recorded and placed on file. In view of the statements made by the parties as stated above, the claim petition of the petitioner above named is disposed of accordingly, however, parties to the claim petition/reference shall be bound by settlement based on statements made before this court which shall constitute part of award.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette.

5. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 193/2015
Date of Institution : 21-04-2015
Date of Decision : 30-05-2018

Shri Sandeep Kumar s/o Shri Hari Singh, r/o Village Khil-Bether, P.O. Sainthal, Tehsil Jogindernagar, District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, I.&P.H. Division Padhar, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Sandeep Kumar s/o Shri Hari Singh, r/o Village Khil-Bether, P.O. Sainthal, Tehsil Jogindernagar, District Mandi, H.P. before the Executive Engineer, I.&P.H. Division Padhar, District Mandi, H.P. *vide* demand notice dated 02-08-2013 regarding his alleged illegal termination of service *w.e.f.* 01-09-2004 suffers from delay and latches? If not, whether termination of the services of Shri Sandeep Kumar s/o Shri Hari Singh, r/o Village Khil-Bether, P.O. Sainthal, Tehsil Jogindernagar, District Mandi, H.P. by the Executive Engineer, I.&P.H. Division Padhar, District Mandi, H.P. *w.e.f.* 01-09-2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily waged beldar by respondent in the year 1997 who worked under Jogindernagar Sub-Division till 31-8-2004 when his service was illegally terminated. It is alleged that a false case was registered against petitioner as a result of which respondent without issuing any notice to him terminated his service although petitioner faced trial and was acquitted by Id. Additional District and Sessions Judge, Mandi *vide* judgment dated 31-3-2011. It is alleged that after his acquittal, petitioner had approached to respondent for his re-engagement as well as to extend him service benefits besides supplied copy of judgment of acquittal aforesaid but his request was not considered and when after considerable period, petitioner did not receive any response from respondent he filed demand notice copy of which was sent to Labour Inspector-cum-Conciliation Officer Jogindernagar on 2-8-2013 and the matter was accordingly listed for conciliation before Conciliation Officer Jogindernagar which failed and consequently failure report was forwarded to

Labour Commissioner, Shimla who declined to refer the matter for adjudication *vide* order dated 10-7-2014. Aggrieved with the order so passed by Labour Commissioner, Shimla, petitioner preferred CWP No. 9373/2014 before the Hon'ble High Court of H.P. which was allowed and the order dated 10-7-2014 of Labour Commissioner was quashed and the matter was accordingly referred to this court for adjudication. The grievance of petitioner remains that his service had been terminated despite sufficiency of work and funds and that while retrenching him from service other juniors to him had been retained and regularized by the respondent. Accordingly, respondent alleges violation of principle of 'First come Last go'. It is prayed that respondent be directed to produce entire relevant records including seniority list of the workmen from the Division from the date of appointment of petitioner and if respondent failed to produce the same an adverse inference may be drawn against respondent. Accordingly, petitioner seeks quashing of oral and illegal termination order passed by respondent against petitioner besides petitioner has also prayed for reengagement/reinstatement with full back wages and other consequential benefits to which he is entitled and that period of interrupted service be also counted as continuous service.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits, admitted petitioner having been engaged as daily waged beldar but the period of engagement is stated to be from September 1997 who worked till August 2004. It is contended that after August 2004 petitioner had never resumed duty who remained absent from duty when Junior Engineer, I&PH, Section Chauntra informed Assistant Engineer *vide* letter dated 6-9-2004 about absence of petitioner from duty where after on 4-10-2004 Assistant Engineer notified the petitioner to attend his duty and despite this letter petitioner did not disclose anything about reason for not attending duty. It is categorically stated that petitioner never intimated respondent/department about his custody and for said reason, Assistant Engineer *vide* letter dated 18-10-2004 notified petitioner qua retrenchment from service as petitioner had withheld fact of judicial custody from respondent. It is admitted that petitioner had raised demand notice in the month of 2013 when respondent/department came to know for the first time that petitioner was acquitted by Id. Additional District & Sessions Judge *vide* order dated 31-3-2011. It is categorically stated that the workmen had been regularized who meted out the criteria laid down by government. Accordingly, denying the cause of action petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, mandays chart Ex. PW1/B, Judgment dated 31-3-2011 Mark-A and order dated July 2014 Mark-B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Upender Vaidya, Executive Engineer, I&PH Division Padhar, District Mandi, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of letter dated 6-9-2004 Ex. RW1/B, copy of letter dated 4-10-2004 Ex. RW1/C, copy of letter dated 14-10-2004 Ex. RW1/D, copy of letter dated 18-10-2004 Ex. RW1/E, copy of mandays chart Ex. RW1/F and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposal of this case.

8. From the contentions raised, following issues were framed on 09-12-2015 for determination which are as under:—

- (1) Whether the industrial dispute raised by the petitioner *vide* demand notice dated 2-8-2013 qua his termination of service during 1-9-2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.

- (2) Whether termination of services of the petitioner by the respondent *w.e.f.* 1-9-2004 is/was improper and unjustified as alleged? ..*OPP.*
- (3) If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (5) Whether the petition is bad on account of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	:	No
Issue No. 2	:	Discussed
Issue No. 3	:	Discussed
Issue No. 4	:	No
Issue No. 5	:	No
Relief	:	Claim petition is partly allowed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 to 3 and 5:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner has remained engaged with the respondent from September 1997 till August 2004 as daily waged beldar corresponding with mandays chart Ex. PW1/B which is the same as RW1/F relied upon by the respondent. It has not been disputed before me that petitioner had been retrenched from service when he remained absent from duty from 1st September, 2004. It is admitted case of the respondent that it learnt detailed facts of petitioner's claim through demand notice dated 2-8-2013 sent by petitioner consequent upon his acquittal *vide* judgment dated 31-3-2011. In the backdrop of foregoing admitted facts on record, it can be safely concluded that petitioner had initially remained engaged from 1997 till 2004 with respondent when retrenched by respondent on 1-9-2004 followed demand notice dated 2-8-2013 of petitioner consequent upon his acquittal *vide* judgment dated 31-3-2011 of Id. Additional Sessions Judge, Mandi. It can also be safely inferred from evidence on record that judgment of acquittal in favour of the claimant/petitioner has remained unchallenged till date which necessarily follows that claimant/petitioner along-with three others had been acquitted for offence under Section 302 and 201 read with Section 34 of IPC which apparently establishes that case against claimant/petitioner was not proved. It is also evident from evidence on record that from 1-9-2004 to 31-3-2011 petitioner was in judicial custody.

12. The grievance of petitioner simplicitor is that he had been retrenched from service without serving any show cause notice or making payment of one month wages in lieu thereof and even after acquittal of petitioner in the year 2011, he continuously approached respondent for his reengagement but respondent through its officers kept avoiding same due to which demand notice had been issued in pursuance to which present reference has been received from appropriate govt. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A stipulating therein

facts establishing engagement of petitioner for period aforesaid and that work of petitioner was found satisfactory by respondent. It is evident from affidavit on oath that petitioner had been terminated from service by respondent, retaining several juniors by ignoring principle of 'Last come First go'. It is alleged that S/Sh. Kumar Sen, Satish Kumar, Kuldeep, Partap Chand along-with other juniors were regularized by the respondent and that after demand notice was issued by petitioner and conciliation proceedings took place before Conciliation Officer, Mandi which yielded no positive result and failure report was consequently submitted to Labour Commissioner, Shimla who declined to make reference 10-7-2014 in pursuance to which CWP No. 9373/2014 was filed which was allowed in favour of petitioner and the matter was referred to this court for adjudication. Accordingly, petitioner alleging retention of juniors and retrenching petitioner from service despite availability of work and funds with respondent has challenged action of respondent in retrenching him from service. In cross-examination, petitioner has although admitted that only those workmen have been regularized who meted out guidelines for regularization and that on 16-10-2004 Junior Engineer Chauntra had notified Assistant Engineer/SDO qua judicial custody of petitioner which established the respondent through its official knew about petitioner being in custody on 1-9-2004. PW1 petitioner has denied that he did not complete 240 days in a specific year prior to his termination. On the other hand, Shri Upender Vaidya, Executive Engineer, I&PH, Padhar Division has sworn in affidavit Ex. RW1/A and referred to various letters correspondence with petitioner Ex. RW1/B to Ex. RW1/E which remained un-replied. Cross-examination of RW1 revealed that demand notice had been received in 2013 but petitioner was not engaged as matter was pending for conciliation before Labour Inspector, Jogindernagar. Significantly, he has admitted in cross-examination that workers as reflected in Ex. P1 were junior to petitioner. Similarly, he has admitted that Ex. P1 had been signed by him according to which all workmen had been engaged from 2-11-2011 to 6-4-2015. Be it stated that Ex. P1 also included year 2013 when demand notice was issued by petitioner and already received by respondent. RW1 has specifically admitted that he had not enclosed seniority list along-with reply. He has clarified by stating that any daily wager who had not completed 240 days in a year, his name was not included in the seniority list.

13. Ex. P1 is the information obtained by Id. counsel for petitioner under Right to Information Act which showed that all the workmen as referred to in list of daily wagers as on 1-1-2016 were junior to petitioner but Kuldeep Singh figuring at serial no.11 and Tilak Raj at serial no.12 had been engaged even after receipt of demand notice dated 2-8-2013 of petitioner by respondent. The explanation put forth by RW1 revealed that as the conciliation was pending before Labour Inspector, Jogindernagar, petitioner was not engaged but statement of RW1 cannot be relied as there is ample evidence on record establishing that failure report had been submitted by Conciliation Officer to Labour Commissioner, Shimla who declined to make reference *vide* order dated 10-7-2014 which was challenged by petitioner before Hon'ble High Court and directions was passed to Labour Commissioner Shimla to make reference. There is no iota of evidence on record establishing as to when conciliation proceedings were pending before Labour Inspector as reference had already been received in April 2015 and on this score testimony of RW1 cannot be relied. Thus, respondent RW1 did not act upon demand notice under the garb of conciliation proceedings before Labour Inspector, Jogindernagar which were not at all pending for reasons stated in foregoing instead workers shown at serial no.11 and 12 in Ex. P1 were appointed by RW1 ignoring rights of petitioner even after receipt of demand notice in 2013 as stated above. As such, respondent had not offered employment to petitioner even when demand notice was received in 2013 instead junior/fresh hands shown at serial nos. 11 and 12 of Ex. P1 were engaged which establishes violation of Section 25-H of the Industrial Disputes Act as it admittedly not the case of respondent that petitioner was given any notice calling upon him to join service after receipt of demand notice on 2-8-2013.

14. In so far as violation of Section 25-G is concerned, suffice would be to state here that RW1 has admitted in his statement made before this court that he has not filed seniority list along-

with reply whereas per pleadings in the claim petition, petitioner had specifically alleged that if respondent failed to produce the seniority list, an adverse inference deserves to be drawn against case of respondent. Since petitioner had come up with specific plea of production of records including seniority list which involved rights of petitioner an adverse inference has to be drawn in view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had prepared or provided seniority list of daily waged workers and even did not file the same with reply despite specific pleadings of petitioner to the effect from non-production of seniority list adverse inference may be drawn against petitioner's case and despite that seniority list was not filed by respondent. Needless to mention here that Ex. P1 also shows various junior workmen had been appointed by respondent from 2008 to 2012 but factually petitioner even after he was under judicial custody did not approach the respondent or communicated about his absence of being under judicial custody. That being so, from 1st September, 2004 till 2013 when the demand notice was received and in between claimant/petitioner was under judicial custody till 31-3-2011 the respondent could not be held liable for violating provisions of Section 25-G of the Industrial Disputes Act but for withholding material evidence on the point of non-production of seniority list, the petitioner could not have certainly establish as to who were workmen junior to him and who were retained and regularized whereas service of petitioner has been retrenched. As such, Ex. P1 can be looked into evidence to the extent that when service of petitioner had been terminated on 1-9-2004 as he was absent from duty without information to respondent and fact of junior workmen having been retained could be established only with the aid of seniority list of workers which had admittedly been prepared by respondent as deposed by RW1 in witness box but neither produced nor circulated. As such, in peculiar facts and absence of petitioner on account of being judicial custody till 31st March, 2011 from 2004 having intervening period in between, the petitioner could not be extended benefit of regularization for all these nine years. However, he can be reengaged when demand notice dated 2-8-2013 was received by RW1 as admitted in cross-examination who denied to engage fresh hands but Ex. P1 revealed that on 21-8-2014 while engaging Kuldeep Singh at serial no.11 and Tilak Raj at serial no. 12 petitioner was not offered employment. As such, respondent is held to have violated Section 25-H of the Industrial Disputes Act as well.

15. Ld. counsel for petitioner has argued that in order to prove violation of provisions of Sections 25-G and 25-H, it was not incumbent upon the petitioner to have worked for 240 days in preceding 12 calendar months from date of his termination in view of judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as required for establishing violation of provisions of Section 25-F of the Act.** On the point of violation of Section 25-F of the Industrial Disputes Act although petitioner has remained engaged from 1997 to 2004 but as per mandays chart on record, it is not clear if petitioner had factually rendered service of 240 days immediately preceding his termination in the year 2004 as petitioner is shown to have worked for 197 days as reflected in Ex. PW1/B and prior to it in the year 2003 petitioner worked for 245 days but specific evidence was required to led so as to establish that on specific dates so as to prove continuity of 240 days he was terminated *i.e.* 1-9-2004 he was continuously working for 240 days prior to his date of termination which has not been duly proved by petitioner in this case. As such, this court is left with no option but to hold that petitioner had failed to prove ingredients of Section 25-F of the Industrial Disputes Act and as such, respondent was not required to issue any notice or pay compensation in lieu notice period to petitioner. It is most pertinent to mention here that claimant/petitioner has not claimed back wages as such when petitioner himself has neither pleaded nor stated so in the witness box, this court is left with no option but to hold that petitioner is not entitled for back wages.

16. In so far as delay in approaching respondent for redressal of his grievance by the petitioner in the case is concerned, suffice would be to state here that petitioner had remained absent from duty from 1-9-2004 till 2-8-2013 when demand notice was sent to respondent irrespective the fact that he had been acquitted on 31-3-2011 by Id. Additional District & Sessions Judge, Mandi which was not instantly notified to respondent although petitioner alleged the he had represented as well as handed over copy of judgment but in the witness box, he has not whispered even a single word as to when he had actually handed over the copy of the judgment to the respondent prior to demand notice. As such, inference which can be drawn is that petitioner for the first time informed respondent *vide* demand notice on 2-8-2013 qua his acquittal. From 2013 till 10-7-2014, petitioner continued approaching respondent as well as other authorities under Act when his prayer for making reference for industrial dispute raised by him and on submission of failure report by Conciliation Officer, Mandi when reference was declined by Labour Commissioner, Shimla in pursuance to which petitioner had filed CWP No. 9937/2013 which was allowed and Labour Commissioner referred dispute for adjudication. As such, petitioner had promptly approached the authority under the Act after his acquittal as has come in evidence and finally came before this court for adjudication when reference was received from appropriate government. As such, **delay from time of acquittal till reference to this court** was satisfactorily explained however, with regard to custody of the petitioner from 1-9-2004 or thereafter till 31-3-2011 when he was under trial before Id. Additional District and Sessions Judge, Mandi, suffice would be to state here that while being in custody, petitioner had not at all notified respondent although respondent knew it as can be gathered from correspondence Ex. RW1/B to Ex. RW1/E which although not established to have been received by the petitioner who was admittedly in custody. As such, delay of nine years also remains explained for reasons stated above and delay in approaching to this court by petitioner stands satisfactorily explained atleast after acquittal in 2011 as stated above also in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the appropriate government, the competent authority has to see that there is exists an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing, reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue of the respondent moreso when government itself has made reference and there could be no circumstances to challenge correctness of reference before the Hon'ble High Court.

17. I have carefully gone through the judgment referred to above and of the view that there is no merit in contention of the Id. Dy. D.A. rather it is fallacious. It would be relevant to refer to para 7 of the judgment (*supra*) in which the Hon'ble Apex Court has clearly held that the issue which fell for determination in the case before Hon'ble Apex Court was whether reference made at such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment however order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 sub-para (8) of the judgment of Hon'ble Apex Court it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was to found be not correct proposition but certainly correctness of reference under Section 10 of Act is not in challenge before this Court.

18. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the **period of making of reference is co-extensive with the existence of dispute** meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although Hon'ble Apex Court has made elaborate discussions qua consideration before making reference which is not issue before this Court. Be it stated judgment referred in **(2016)** primarily reveals guidelines for reference under Section 10 of Industrial Disputes Act to be made by competent authority under the Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which relief of reinstatement or compensation had been denied. As such, judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Act and not for wrongful termination under Section 25 of Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person, working as clerk whereas the claimant before this court is uneducated unskilled labourer besides being an illiterate villager engaged for manual work by respondent. On this score also, facts of case are different. Not only this, law of limitation is also held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Since judgment of 2016 had different facts from case in hand and would apply only qua law limitation being not applicable. Ld. AR/counsel for the petitioner has contended that termination of petitioner has been made in violation of provisions of Act, 1947 and thus the petitioner is liable to be reinstated in service with full back wages. On the other hand Ld. Dy. D.A. has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which Hon'ble Apex Court has held where compensation is appropriate relief, reinstatement should not be granted besides detailed elaborate criteria to be taken into consideration by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

19. I have gone through the judgment relied upon by Ld. Dy. D.A. for respondent and of the view that judgment in Geetam Singh's case of (2013) does not apply to the case in hand in which Hon'ble Apex Court has laid down guidelines and factors to be considered by the Labour Court in cases involving violation of Act. In the case in hand before this Court, petitioner had promptly approached unlike in **Geetam Singh's** case in which when dispute was raised after six years, Hon'ble Apex Court instead of reinstatement of claimant/petitioner had awarded compensation but in the case in hand, demand notice was given to respondent after about 9 years besides delay was satisfactorily explained by petitioner as PW1. Since the judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)** had different facts particularly on delay in giving demand notice by petitioner before Hon'ble Apex Court after six years and the same does not apply in the case in hand as petitioner has satisfactorily explained circumstances he raised demand notice after acquittal in 2011 and prior that from 2004 till 2011 he was in judicial lock-up in the knowledge of respondent. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement with other consequential benefits instead of lump-sum compensation. Issues no. 1 is decided in affirmative whereas issue no. 5 is decided in negative and issue nos. 2 and 3 are decided as discussed and are answered accordingly.

Issue No. 4:

20. Ld. Dy. D.A. representing respondent contended with vehemence that claim petition is not maintainable but factually when service of petitioner had been terminated illegally in violation

of provisions of Sections 25-G and 25-H of the Industrial Disputes Act as discussed in foregoing paras, it could not be stated that claim petition is not maintainable. Similarly, for violation of Section 25-F of the Industrial Disputes Act although petitioner has failed to adduce reliable evidence not proving ingredients of Section 25-F of the Industrial Disputes Act itself is no criteria to deny relief to petitioner and on this score also claim petition is maintainable. Accordingly, from pleadings and evidence on record, the claim petition is maintainable. Issue is thus answered in negative in favour of petitioner and against the respondent.

Relief

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages from date of demand notice dated 02-8-2013**, leaving the parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

ब अदालत श्री संजीव कुमार, कार्यकारी दण्डाधिकारी, कल्पा, जिला किन्नौर (हि0 प्र0)

Sh. Chakra Bhadur s/o Sh. Heeramani, r/o Village Rajabala Anfield Jungal, Vikasnagar, Distt. Dehradun, Uttarakhand presently residing at V.P.O. Reckong Peo, Tehsil Kalpa, Distt. Kinnaur (H. P.).

बनाम

1. आम जनता ग्राम खवांगी/रिकांग पिओ
2. प्रधान ग्राम पंचायत खवांगी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0)

विषय.—प्रार्थी की पुत्री का नाम व जन्म तिथि ग्राम पंचायत खवांगी के जन्म पंजीकरण रजिस्टर में दर्ज करवाये जाने बारे अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म पंजीकरण करने बारे।

हर खास व आम जनता को बजरिया इश्तहार के माध्यम से सूचित किया जाता है कि Sh. Chakra Bhadur ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन-पत्र मय शपथ-पत्र प्रस्तुत किया है कि उसकी पुत्री सन्तोषी पुत्री श्री चक्कर बाहदुर का जन्म दिनांक 23-08-2003 को हुआ है तथा अज्ञानतावश प्रार्थी ने उसका पंजीकरण ग्राम पंचायत खवांगी के जन्म पंजीकरण रजिस्टर में दर्ज नहीं करवाया है, अब प्रार्थी उपरोक्त नाम

व जन्म तिथि ग्राम पंचायत खवांगी के जन्म पंजीकरण रजिस्टर में दर्ज करवाना चाहता है इस विषय में आदेश जारी करने का अनुरोध किया है।

अतः ग्राम पंचायत खवांगी, तहसील कल्या, जिला किन्नौर की जनता को बजरिया इशतहार के माध्यम से सूचित किया जाता है कि यदि सन्तोषी पुत्री श्री चक्कर बाहदुर का जन्म दिनांक 23-08-2003 को हुआ है का पंजीकरण ग्राम पंचायत खवांगी के जन्म पंजीकरण रजिस्टर में दर्ज करने बारे कोई आपत्ति हो तो वह दिनांक 04-04-2019 को या इससे पूर्व अदालत में हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा आवेदन-पत्र पर जन्म पंजीकरण के आदेश पारित कर सचिव ग्राम पंचायत खवांगी को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज दिनांक 5-03-2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

संजीव कुमार,
कार्यकारी दण्डाधिकारी,
कल्या, जिला किन्नौर (हि0 प्र0)।

**In the Court of Shri Neeraj Gupta, Sub-Divisional Magistrate, Shimla (R),
District Shimla (H. P.)**

Sh. Laiq Ram s/o Shri Chet Ram, r/o Village Patyadi, P.O. Maluthi via Dhalli, Tehsil and District Shimla, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Sh. Laiq Ram s/o Shri Chet Ram, r/o Village Patyadi, P.O. Maluthi via Dhalli, Tehsil and District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter the name/date of death of his mother named—Late Smt. Vidya Devi w/o Shri Chet Ram, r/o Village Patyadi, P.O. Maluthi via Dhalli, Tehsil and District Shimla, Himachal Pradesh in the record of Secy., Birth and Death, Gram Panchayat Chamyana, Tehsil and District Shimla.

Sl. No.	Name of the family member	Relation	Date of death
1.	Late Smt. Vidya Devi	Mother	23-07-2010

Hence, this proclamation is issued to the general public if they have any objection/claim regarding entry of the name/date of death of above named in the record of Gram Panchayat Chamyana, Tehsil and District Shimla may file their claims/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 18-03-2019 under my signature and seal of the court.

Seal.

Sd/-
Sub-Divisional Magistrate,
Shimla (R), District Shimla (H.P.).

**In the Court of Sh. Rishabh Sharma, Executive Magistrate, Tehsil Nerwa,
District Shimla (H. P.).**

Shri Bhim Singh s/o Shri Dhani Ram, r/o Village Thachali, P.O. Nerwa, Tehsil Nerwa,
District Shimla (H.P.) . . Applicant.

Versus

General Public . . Respondent.

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Whereas, Shri Bhim Singh s/o Shri Dhani Ram, r/o Village Thachali, P.O. Nerwa, Tehsil Nerwa, District Shimla (H.P.) has preferred an application to the undersigned for registration of name of his/her son/Daughter namely Shory Kumar whose date of birth 25-03-2016 & Kumari Gunjan (21-04-2014) in the Gram Panchayat Nerwa, Tehsil Nerwa, District Shimla (H.P.).

Therefore by this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his/her objection in writing in this court on or before 15-04-2019 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the court on this 6-03-2019.

Seal.

RISHABH SHARMA,
Executive Magistrate,
Tehsil Nerwa, District Shimla (H.P.).

**In the Court of Sh. Rishabh Sharma, Executive Magistrate, Tehsil Nerwa,
District Shimla (H. P.).**

Shri Shyam Singh s/o Shri Thali Ram, r/o Village Auli, P.O. Tharoch, Tehsil Nerwa,
District Shimla (H.P.) . . Applicant.

Versus

General Public . . Respondent.

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Whereas, Shri Shyam Singh s/o Shri Thali Ram, r/o Village Auli, P.O. Throch, Tehsil Nerwa, District Shimla (H.P.) has preferred an application to the undersigned for registration of name of his/her son/Daughter namely Miss Tripti Kesta whose date of birth 8-02-1993 in the Gram Panchayat Tharoch, Tehsil Nerwa, District Shimla (H.P.).

Therefore by this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 5-04-2019 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the court on this 5-03-2019.

Seal.

RISHABH SHARMA,
Executive Magistrate,
Tehsil Nerwa, District Shimla (H.P.).

ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता (द्वितीय वर्ग), हरोली, जिला ऊना
(हि० प्र०)

श्रीमती लीला देवी पत्नी स्व० श्री हजार सिंह, वासी बाथड़ी, तहसील हरोली, जिला ऊना (हि० प्र०)

. . वादिया ।

बनाम

आम जनता

प्रतिवादीगण ।

दरखास्त बमुराद दुरुस्ती नाम राजस्व अभिलेख महाल बाथड़ी वेला, तहसील हरोली, जिला ऊना, खेवट 271, 272, 273, 274, 275, 276, खतौनी नं० 318, 319, 320, 321, 322, 323, जमाबन्दी साल 2015—16 वाकया महाल बाथड़ी वेला, तहसील हरोली, जिला ऊना ।

इश्तहार/नोटिस बनाम प्रतिवादी

श्रीमती लीला देवी पत्नी स्व० श्री हजार सिंह, वासी बाथड़ी, तहसील हरोली, जिला ऊना (हि० प्र०) ने इस न्यायालय में आवेदन—पत्र दुरुस्ती नाम प्रस्तुत किया कि राजस्व रिकार्ड में प्रार्थिया का नाम श्रीमती शीला देवी पत्नी स्व० श्री हजार सिंह गलत दर्ज किया गया है अतः प्रार्थिया का नाम श्रीमती शीला देवी पत्नी स्व० श्री हजार सिंह की बजाये श्रीमती लीला देवी पत्नी स्व० श्री हजार सिंह, वासी बाथड़ी सही दर्ज किया जावे ।

अतः इस इश्तहार अखबार/मुशत्री मुनादी के माध्यम से सर्वसाधारण को सूचित किया है कि यदि किसी व्यक्ति को नाम दुरुस्ती बारे कोई आपत्ति हो तो वह अपना उजर लिखित या मौखिक तौर पर इस न्यायालय में निर्धारित तारीख पेशी से पूर्व या तारीख पेशी दिनांक 5—04—2019 को प्रस्तुत कर सकता है । निर्धारित तारीख पेशी तक उजर/एतराज प्राप्त न होने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती बारे आदेश पारित कर दिये जाएंगे । निर्धारित तारीख पेशी के उपरान्त कोई भी उजर काबिले समायत न होगा व न्यायालय द्वारा एकतरफा कार्यवाही अमल में लाई जाकर इस सन्दर्भ में फैसला सुना दिया जाएगा ।

आज दिनांक 6—03—2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ ।

मोहर ।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग,
हरोली, जिला ऊना (हि० प्र०) ।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता (द्वितीय वर्ग), हरोली, जिला ऊना
(हि0 प्र0)**

श्री रविन्द्र कुमार पुत्र रामजती पुत्र शिबू, वासी नंगल कलां, तहसील हरोली, जिला ऊना (हि0 प्र0)
... वादी।

बनाम

आम जनता

प्रतिवादीगण।

दरखास्त बमुराद दुरुस्ती नाम राजस्व अभिलेख महाल टाहलीवाल उपरला, तहसील हरोली, जिला ऊना, खेवट 36, 39 मिन, 119, 40, खतौनी नं0 38 मिन, 41 मिन, 146 मिन, 42 जमाबन्दी साल 2012-13 वाकया महाल टाहलीवाल उपरला, तहसील हरोली, जिला ऊना।

इशतहार व नोटिस :

श्री रविन्द्र कुमार पुत्र रामजती पुत्र शिबू, वासी नंगल कलां, तहसील हरोली, जिला ऊना (हि0 प्र0) ने इस न्यायालय में आवेदन-पत्र दुरुस्ती नाम प्रस्तुत किया कि राजस्व रिकार्ड में प्रार्थी का नाम श्री रवि कुमार पुत्र रामजती पुत्र शिबू गलत दर्ज किया गया है। अतः प्रार्थी का नाम श्री रवि कुमार पुत्र रामजती की बजाये श्री रविन्द्र कुमार पुत्र रामजती पुत्र शिबू, वासी महाल टाहलीवाल उपरला सही दर्ज किया जावे।

अतः इस इशतहार अखबार/मुशत्री मुनादी के माध्यम से सर्वसाधारण को सूचित किया है कि यदि किसी व्यक्ति को नाम दुरुस्ती बारे कोई आपत्ति हो तो वह अपना उजर लिखित या मौखिक तौर पर इस न्यायालय में निर्धारित तारीख पेशी से पूर्व या तारीख पेशी दिनांक 5-04-2019 को प्रस्तुत कर सकता है। निर्धारित तारीख पेशी तक उजर/एतराज प्राप्त न होने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती बारे आदेश पारित कर दिये जाएंगे। निर्धारित तारीख पेशी के उपरान्त कोई भी उजर काबिले समायत न होगा व न्यायालय द्वारा एकतरफा कार्यवाही अमल में लाई जाकर इस सन्दर्भ में फैसला सुना दिया जाएगा।

आज दिनांक 5-03-2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/-

नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग,
हरोली, जिला ऊना (हि0प्र0)।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता (द्वितीय वर्ग), हरोली, जिला ऊना
(हि0 प्र0)**

श्री मंगल सिंह पुत्र विधि चन्द, वासी चन्दपुर, तहसील हरोली, जिला ऊना (हि0 प्र0) ... वादी।

बनाम

आम जनता

प्रतिवादीगण।

दरखास्त बमुराद दुरुस्ती नाम राजस्व अभिलेख महाल चन्दपुर, तहसील हरोली, जिला ऊना, खेवट 700, 703, 225 मिन, 701, 704, जमाबन्दी साल 2013-14 वाकया महाल चन्दपुर, तहसील हरोली, जिला ऊना।

इशतहार व नोटिस बनाम प्रतिवादी

श्री मंगल सिंह पुत्र विधि चन्द, वासी चन्दपुर, तहसील हरोली, जिला ऊना (हि0 प्र0) ने इस न्यायालय में आवेदन-पत्र दुरुस्ती नाम प्रस्तुत किया कि राजस्व रिकार्ड में प्रार्थी का नाम गलत दर्ज किया गया है। अतः उनका नाम भजन सिंह पुत्र विधि चन्द की बजाये मंगल सिंह पुत्र विधि चन्द सही दर्ज किया जावे।

अतः इस इशतहार/नोटिस के माध्यम से सर्वसाधारण को सूचित किया है कि यदि किसी व्यक्ति को नाम दुरुस्ती बारे कोई आपत्ति हो तो वह अपना उजर लिखित या मौखिक तौर पर इस न्यायालय में निर्धारित तारीख पेशी से पूर्व या तारीख पेशी दिनांक 5-04-2019 को प्रस्तुत कर सकता है। निर्धारित तारीख पेशी तक उजर/एतराज प्राप्त न होने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती बारे आदेश पारित कर दिये जाएंगे। निर्धारित तारीख पेशी के उपरान्त कोई भी उजर काबिले समायत न होगा व न्यायालय द्वारा एकतरफा कार्यवाही अमल में लाई जाकर इस सन्दर्भ में फैसला सुना दिया जाएगा।

आज दिनांक 5-03-2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग,
हरोली, जिला ऊना (हि0 प्र0)।

ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता (द्वितीय वर्ग), हरोली, जिला ऊना
(हि0 प्र0)

श्री रवि कुमार अग्निहोत्री पुत्र बाल किशन, वासी हरोली, तहसील हरोली, जिला ऊना (हि0 प्र0)
प्रतिवादी।

बनाम

आम जनता

प्रतिवादीगण।

दरखास्त बमुराद दुरुस्ती नाम राजस्व अभिलेख महाल हरोली, तहसील हरोली, जिला ऊना, खेवट 192, खतौनी 792, कित्ता 5, रकबा तादादी 01-24-12 है0 जमाबन्दी साल 2015-16 वाकया महाल हरोली, तहसील हरोली, जिला ऊना।

इशतहार व नोटिस बनाम प्रतिवादी

श्री रवि कुमार अग्निहोत्री पुत्र बाल किशन, वासी हरोली, तहसील हरोली, जिला ऊना (हि0 प्र0) ने इस न्यायालय में आवेदन-पत्र दुरुस्ती नाम प्रस्तुत किया कि राजस्व रिकार्ड में प्रार्थी के पिता का नाम बालक राम पुत्र नत्थू गलत दर्ज किया गया है। अतः उनका नाम बालक राम पुत्र नत्थू की बजाये बाल किशन पुत्र नत्थू राम सही दर्ज किया जावे।

अतः इस इश्तहार/नोटिस के माध्यम से सर्वसाधारण को सूचित किया है कि यदि किसी व्यक्ति को नाम दुरुस्ती बारे कोई आपत्ति हो तो वह अपना उजर लिखित या मौखिक तौर पर इस न्यायालय में निर्धारित तारीख पेशी से पूर्व या तारीख पेशी दिनांक 5-04-2019 को प्रस्तुत कर सकता है। निर्धारित तारीख पेशी तक उजर/एतराज प्राप्त न होने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती बारे आदेश पारित कर दिये जाएंगे। निर्धारित तारीख पेशी के उपरान्त कोई भी उजर काबिले समायत न होगा व न्यायालय द्वारा एकतरफा कार्यवाही अमल में लाई जाकर इस सन्दर्भ में फैसला सुना दिया जाएगा।

आज दिनांक 5-03-2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग,
हरोली, जिला रुना (हि0प्र0)।

SPECIFIC NOTIFICATION

FINANCE DEPARTMENT

NOTIFICATION

Shimla-2, the 22nd March, 2019

No. Fin-2-C-(12)-3/2018 (II).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (securities) of **4-year** tenure for an aggregate amount of **₹ 500.00 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called Specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the loan

1. (i) The proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.
- (ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293 (3) of the Constitution of India.

Method of Issue

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai-400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003, dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the yield based auction under multiple price formats.

Allotment to Non-Competitive Bidders

3. The Government Stock upto 10% of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1% of the notified amount for a single bid as per the Revised Scheme for Non-Competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure-II).

Place and Date of Auction

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai-400 001 on **March 26, 2019**. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) System as stated below on **March 26, 2019**.

(a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) System between 10.30 AM and 12.00 PM.

(b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) System between 10.30 A.M. and 11.30 A.M.

Result of the Auction

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **March 27, 2019**.

Method of Payment

6. Successful bidders will make payments on **March 27, 2019** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort)/New Delhi.

Tenure

7. The Stock will be of **4-year** tenure. The tenure of the Stock will commence on **March 27, 2019**.

Date of Repayment

8. The loan will be repaid at par on **March 27, 2023**.

Rate of Interest

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **September 27** and **March 27**.

Eligibility of Securities

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under Section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

BY ORDER AND IN THE NAME OF THE GOVERNOR OF HIMACHAL PRADESH

Sd/-
Addl. Chief Secretary.

SPECIFIC NOTIFICATION

FINANCE DEPARTMENT

NOTIFICATION

Shimla-2, the 22nd March, 2019

No. Fin-2-C-(12)-3/2018 (I).—Government of Himachal Pradesh hereby notifies the Re-issue of 8.73% Himachal GS 2022 for an aggregate amount of ₹ 200.00 crore (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called Specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the loan

1. (i) The proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.
- (ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293 (3) of the Constitution of India.

Method of Issue

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai-400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003, dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the price based auction under multiple price formats.

Allotment to Non-Competitive Bidders

3. The Government Stock upto 10% of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1% of the notified

amount for a single bid as per the Revised Scheme for Non-Competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure-II).

Place and Date of Auction

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai-400 001 on **March 26, 2019**. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) System as stated below on **March 26, 2019**.
 - (a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) System between 10.30 A.M. and 12.00 P.M.
 - (b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) System between 10.30 A.M. and 11.30 A.M.

Result of the Auction

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **March 27, 2019**.

Method of Payment

6. Successful bidders will make payments on **March 27, 2019** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort)/New Delhi.

Tenure

7. The Stock will be of **10-year** tenure from the date of commencement on **February 08, 2012**.

Date of Repayment

8. The loan will be repaid at par on **February 08, 2022**.

Rate of Interest

9. Interest at the rate of 08.73% per annum will accrue on the nominal value of the stock from the date of original issue date and will be paid half yearly on August 08 and February 08.

Eligibility of Securities

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under

Section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

BY ORDER AND IN THE NAME OF THE GOVERNOR OF HIMACHAL PRADESH

Sd/-

Addl. Chief Secretary.